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**United States**  
**Circuit Court of Appeals**

**For the Ninth Circuit.**

BALDWIN SHIPPING COMPANY, INC., a Corporation,

Appellant,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,

Appellee.

**Apostles on Appeal.**

Upon Appeal from the Southern Division of the  
United States District Court for the  
Northern District of California,  
First Division.

FILED

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F. D. MONCKTON,  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the Southern Division of the United States District Court, for the Northern District of California, First Division.

IN ADMIRALTY—No. 16,755.

IN PERSONAM.

BALDWIN SHIPPING COMPANY, INC., a  
Corporation,

Libelant,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,  
Libelee.

**Praeipie for Transcript on Appeal.**

To the Clerk of the Above-entitled Court:

Please prepare transcript of record in this cause on appeal to the United States Circuit Court of Appeals for the Ninth Circuit and include in said transcript the following:

1. Statement required by Admiralty Rule 4, Section 1, Subdivision 1, of said Circuit Court of Appeals.

2. All the pleadings, together with the exhibits annexed thereto, the same being:

(a) Amended libel and interrogatories.

(b) Answer to amended libel and interrogatories and interrogatories propounded by libelee.

(c) Amendment to answer to amended libel.

(d) Libelant's answers to libelee's interrogatories.

3. All testimony and depositions taken in said cause.

4. Court minutes or proceedings and orders in the above cause.

5. The opinion by Rudkin, D. J.

6. The final decree.

7. The original exhibits introduced in evidence in the above [1\*] cause, together with stipulation of counsel and order of Court for their transmission to the Circuit Court of Appeals.

8. Notice of appeal, notice of filing bond on appeal and assignment of errors.

9. This praecipe.

Dated February 21, 1921.

GLENSOR, CLEWE & VAN DINE,

Proctors for Libelant.

Due service and receipt of a copy of the within — is hereby admitted this — day of —, 19—.

FORD & JOHNSON,

Attorney for ———.

[Endorsed]: Filed Feb. 23, 1921. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [2]

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\*Page-number appearing at foot of page of original certified Apostles on Appeal.

In the Southern Division of the District Court of the United States for the Northern District of California, First Division.

No. 16,755.

BALDWIN SHIPPING COMPANY, INC., a Corporation,

Libelant,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,

Respondent.

**Statement of Clerk U. S. District Court.**

**PARTIES.**

Libelant: BALDWIN SHIPPING COMPANY, INC., a Corporation.

Respondent: SOUTHERN PACIFIC COMPANY, a Corporation. [3]

**PROCTORS.**

For Libelant and Appellant: GLENSOR, CLEWE & VAN DINE, San Francisco, Calif.

For Respondent and Appellee: FORD & JOHNSON, San Francisco, Calif.

**PROCEEDINGS.**

1920.

January 7. Filed libel *in personam* for breach of contract.

Issued citation for the appearance of respondent, which was afterwards, to wit, on January 27th.

1920, returned, with the following return of the United States marshal endorsed thereon:

“I have served this writ personally, by copy on Southern Pacific Company, by handing copy personally to E. A. Van Wynan, Statutory Agent, this 8th day of January, A. D. 1920.

J. B. HOLOHAN,  
U. S. Marshal.

By C. G. Martin,  
Deputy Marshal.”

30. Filed exceptions to libel.
- February 21. A hearing was this day had, before the Honorable Frank H. Rudkin, Judge, on the exceptions to libel, and the matter ordered submitted on the records.
25. Filed order that the exceptions to libel be sustained so far as they pertain to the nonattachment of shipping contract. [4]
- March 5. Filed amended libel with interrogatories attached.
24. Filed exceptions to amended libel.
27. A hearing was this day had on the exceptions to the amended libel, before the Honorable R. S. Bean, Judge, and after argument by counsel, were ordered overruled.

April 22. Filed answer to amended libel, with answers to interrogatories propounded by libelant attached, and, also, interrogatories propounded by respondent.

Filed libelant's answers to interrogatories propounded by respondent.

August 19. Filed amendment to answer to amended libel.

Filed deposition of Glenna De Witt Green, taken on behalf of libelant.

Filed deposition of John Gray Stubbs, taken on behalf of libelant.

This cause came on this day for hearing, before the Honorable Frank H. Rudkin, Judge. After hearing, the cause was ordered submitted.

November 8. Filed opinion by Judge Frank H. Rudkin, dismissing libel.

December 8. Filed final decree.

1921.

February 23. Filed notice of appeal.

Filed assignment of errors.

Filed bond on appeal in the sum of \$250.00.

Filed testimony taken in open court.

In the Southern Division of the United States  
District Court of the Northern District of Cali-  
fornia, First Division.

IN ADMIRALTY—No. 16,755.

IN PERSONAM.

BALDWIN SHIPPING COMPANY, INC., a  
Corporation,

Libelant,

vs.

SOUTHERN PACIFIC COMPANY, a Corpora-  
tion,

Libelee.

**Amended Libel.**

To the Honorable Judges of the United States Dis-  
trict Court, Southern Division, in and for the  
Northern District of California:

The amended libel of Baldwin Shipping Com-  
pany, Inc., an Illinois corporation, against South-  
ern Pacific Company, a corporation, in a cause of  
contract civil and maritime, for a first cause of  
libel alleges:

I.

That libelant is a corporation organized, existing  
and doing business under and by virtue of the laws  
of the State of Illinois, engaged in the business of  
freight forwarding agent, and having an agent in  
the City and County of San Francisco, State of  
California.

II.

That libelee is a corporation organized, existing and doing business under and by virtue of the laws of the State of Kentucky.

III.

That heretofore, to wit, on or about the 22d day of June, 1917, libelee agrees with libelant to reserve steamer space for the transportation of and to transport, or cause to be transported from [6] San Francisco, California, to Japan, two thousand (2,000) tons of pig iron and steel articles, in excessive sizes, for late July, August and September, 1917, clearance, at the rate of \$15.00 per ton, weight or measurement ship's option.

IV.

That libelee did not reserve steamer space for said commodity, or any part thereof.

That at divers and various times during the three months July, August and September, 1917, libelant tendered to libelee said two thousand (2,000) tons of pig iron and steel articles, in excessive sizes, for transportation to Japan, and demanded steamer space for the transportation of and the transportation thereof from the port of San Francisco to Japan, but libelee failed, neglected and refused to accept said commodity, or any part thereof, for transportation, or to transport said commodity, or cause it to be transported, or to furnish or supply steamer space for the transportation thereof, or any part thereof, in accordance with the terms of said agreement or at all.

## V.

That by reason of libelee's breach of said agreement, libelant was obliged to and did procure other space and transportation for said commodity, and the whole thereof, at the market rate for ocean space from the port of San Francisco to Japan, at the earliest time possible for libelant to obtain space therefor after the breach of said agreement, and libelant was obliged to pay and did pay for the transportation of said commodity the sum of ten thousand dollars in excess of the agreed rate, to wit, two thousand tons at \$15.00 per ton, to its damage in the said sum of ten thousand dollars.

## VI.

That the said rates so paid by libelant for the transportation [7] of said commodity were just and reasonable and were and constituted the reasonable and prevailing market rates for said commodity from San Francisco to Japan at the earliest date after the breach of said agreement it was possible for libelant to secure other space and transportation therefor.

## VII.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court.

For a further, second and separate cause of libel against libelee, libelant alleges:

## I.

That libelant is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, engaged in the business of



freight forwarding agent, and having an agent in the City and County of San Francisco, State of California.

II.

That libelee is a corporation organized, existing and doing business under and by virtue of the laws of the State of Kentucky.

III.

That heretofore, to wit, on or about the 28th day of June, 1917, libelee agreed with libelant to reserve steamship space for the transportation of and to transport, or cause to be transported from the port of San Francisco to Kobe and Yokohama, Japan, two thousand five hundred (2,500) tons of pig iron and steel articles at the rate of fifteen dollars (\$15.00) per ton, weight or measurement ship's option, for August to December, 1917, clearance.

IV.

That libelee did not reserve steamer space for said commodity, [8] or any part thereof.

That libelant at divers and various times during the months August to Decembred, 1917, tendered libelee said two thousand five hundred (2,500) tons of pig iron and steel articles for transportation to Kobe and Yokohama, Japan, and demanded space therefor and the transportation thereof to said ports; that libelee failed, neglected and refused to accept said commodity for transportation, to furnish steamer space therefor, or to transport said commodity, or any part thereof, to Kobe and Yokohama, Japan.

## V.

That by reason of libelee's breach of said agreement and refusal to accept said commodity for transportation, cause same to be transported, or furnish space for the transportaion thereof, libelant was obliged to and did procure other space and transportation therefor, and was obliged to and did pay for the transportation of said commodity the sum of twelve thousand five hundred dollars (\$12,500.00) in excess of the agreed rate, to wit, 2,500 tons at \$15.00 per ton, to its damage in the said sum of twelve thousand five hundred dollars (\$12,500.00).

## VI.

That the said rates so paid by libelant for the transportation of said commodity were just and reasonable and were and constituted the reasonable and prevailing market rates for said commodity from San Francisco to Kobe and Yokohama, Japan, at the earliest date after the breach of said agreement it was possible for libelant to secure other space and transportation therefor.

## VII.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court. [9]

For a further, third and separate cause of libel against libelee, libelant alleges:

## I.

That libel is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois engaged in the business of

freight forwarding agent, and having an agent in the City and County of San Francisco, State of California.

II.

That libelee is a corporation organized, existing and doing business under and by virtue of the laws of the state of Kentucky.

III.

That heretofore, to wit, on or about the 22d day of June, 1917, libelee agreed with libelant to reserve space for the transportation of and to transport, or cause to be transported seven hundred and fifty tons of tinplate a month for September, October, November and December, 1917, clearance to Shanghai, at the rate of sixteen dollars per ton, weight or measurement ship's option.

IV.

That libelee did not reserve steamer space for said commodity, or any part thereof.

That during the months of September, October, November and December, 1917, and each of said months, libelant tendered seven hundred and fifty (750) tons of tinplate for transportation to Shanghai and demanded steamship space therefor; that libelee failed, neglected and refused to accept for transportation, to furnish steamship space for, or to transport, or cause to be transported said seven hundred and fifty tons of tinplate during any of said months, or at all; that libelant was obliged to and did procure other transportation therefor, and was obliged to and did pay the rate of twenty-two dollars and fifty cents (\$22.50) per ton from San

Francisco [10] to Shanghai for said tinplate and the whole thereof, to its damage in the sum of nineteen thousand five hundred dollars (\$19,500.00).

VI.

That the said rate so paid by libelant for the transportation of said commodity was just and reasonable and was and constituted the reasonable and prevailing market rate for said commodity from San Francisco to Shanghai at the earliest date after the breach of said agreement it was possible for libelant to secure other space and transportation therefor.

VII.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court.

WHEREFORE, libelant prays that the said Southern Pacific Company, a corporation, be cited to appear and answer all and singular the matters aforesaid, and to also answer, on oath or solemn affirmation, the interrogatories propounded by libelant to it, attached hereto and made a part hereof, and that this Honorable Court will decree the payment of damages aforesaid, with interest and costs, and that libelant may receive such other and further relief as may be meet in the premises.

Dated March 4, 1920.

AITKEN, GLENSOR, CLEWE & VAN  
DINE,

Proctors for Libelant. [11]

State of California,  
City and County of San Francisco,—ss.

F. E. Ragland, being first duly sworn, deposes and says:

That he is agent for Baldwin Shipping Company, Inc., a corporation, libelant in the above and foregoing libel; that certain of the matters set forth in the foregoing libel are derived from personal knowledge and the remaining matters set forth are derived from original documents and correspondence on file in the office of the said libelant; that affiant has read the foregoing libel and knows the contents thereof, and as to the matters therein derived from personal knowledge the same are true, and as to the remaining matters therein stated they are true to the best of affiant's knowledge, information and belief.

F. E. RAGLAND.

Subscribed and sworn to before me this 4th day of March, A. D. 1920.

[Seal of the Notary]      W. H. PEYBURN,  
Notary Public in and for the City and County of  
San Francisco, State of California. [12]

**Interrogatories Propounded to Libelee.**

1. Was J. G. Stubbs employed by libelee during the month of June, 1917?
2. If your answer to the foregoing Interrogatory is "Yes," in what capacity was J. G. Stubbs employed during the month of June, 1917?

Due service and receipt of a copy of the within

amended libel is hereby admitted this 4th day of March, 1920.

GEO. K. FORD,  
Attorney for \_\_\_\_\_.

[Endorsed]: Filed Mar. 5, 1920. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [13]

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In the Southern Division of the United States District Court of the Northern District of California, First Division.

IN ADMIRALTY—No. 16,755.

IN PERSONAM.

BALDWIN SHIPPING COMPANY, INC., a Corporation,

Libelant,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,

Libelee.

**Answer to Amended Libel.**

Comes now the libelee above named and answers the allegations of the amended libel herein, and in answer to the allegations in the first cause of libel therein contained, and by way of answer admits, denies, alleges and avers as follows, to wit:

Avers that it has no information or belief sufficient to answer the allegations contained in paragraph I of said first cause of libel, and basing its

denial upon this ground, denies each and every, all and singular the allegations contained therein.

Admits the allegations contained in paragraph II of said first cause of libel.

Denies that heretofore or on or about the 22d day of June, 1917, libelee agreed with libelant to reserve steamer space for the transportation of or transport or cause to be transported from San Francisco, California, or from any other place at all to Japan, or any other place at all, two thousand tons of pig iron, or steel articles in excessive or any sizes or at all, for late or any July or August or [14] September, 1917, clearance at a rate of \$15.00 per ton, or at any other price or at all.

Denies that libelee did not reserve steamer space for said commodity or any part thereof.

Denies that at divers or various or any times during the months of July or August or September of 1917, libelant tendered to libelee said two thousand (2,000) tons of pig iron or steel articles, in excessive sizes, for transportation to Japan or demanded steamer space for the transportation of or the transportation thereof from the port of San Francisco to Japan, or that libelee failed or neglected or refused to accept said or any commodity or any part thereof for transportation, or to transport said or any commodity or cause it to be transported, or furnish or supply steamer space for the transportation thereof, in accordance with the terms of said or any agreement.

Denies that by reason of libelee's or any breach of said or any agreement, libelant was obliged to or

did procure other space or transportation for said commodity, or the whole thereof at the or any market rate for ocean space from the port of San Francisco to Japan at the earliest or any time possible for libelant to obtain space therefor after the or any alleged breach of said or any agreement, or that libelant by reason of the alleged or any breach of said or any agreement was obliged to or did pay for the or any transportation of said or any commodity the sum of ten thousand dollars or any other sum in excess of the or any agreed rate to its damage in the sum of ten thousand dollars, or any other sum at all.

Denies that said or any rates so or at all paid by libelant for the or any transportation of the or any commodity were just or reasonable or were or constituted the reasonable [15] or prevailing market rates for said or any commodity from San Francisco to Japan at the earliest or any date after the or any breach of said or any agreement it was possible for libelant to secure.

Denies that all and singular the or any premises are true.

In further answer to the second or separate cause of libel therein contained, libelee avers that it has not sufficient information or belief to enable it to answer the allegations contained in paragraph I of said second cause of libel, and basing its denial thereof upon this ground, denies each and every, all and singular the allegations and each and every part thereof contained.

Denies that heretofore or on or about the 28th



day of June, 1917, libelee agreed with libelant to reserve steamship or any space for the or any transportation of or to transport or cause to be transported from the port of San Francisco to Kobe or Yokohama, Japan, 2,500 tons or any other quantity of pig iron or steel articles, at the or any rate of \$15.00 per ton, or any other price at all, weight or measurement of ship's option for August to December, 1917, clearance, or for a clearance at any other time at all.

Denies that libelee did not reserve steamer space for said or any commodity or any part thereof.

Denies that libelee at divers or various times during the or any months from August to December, 1917, tendered libelee in conformity to said or any agreement said 2,500 tons of pig iron or steel articles for transportation to Kobe or Yokohama, Japan, or demanded space therefor or the transportation [16] thereof to said or any ports.

Denies that libelee failed or neglected or refused to accept said or any commodity for transportation or to furnish steamer space therefor, or to transport said or any commodity or any part thereof to Kobe or Yohohama, Japan, in violation or breach of any agreement between the parties hereto.

Denies that by reason of libelee's alleged or any breach of said or any agreement or refusal to accept said or any commodity for transportation or cause the same to be transported or to furnish space for transportation thereof, libelant was obliged to or did procure other space or transportation therefor or at all or was obliged to or did pay for

the transportation of said or any commodity the sum of twelve thousand five hundred (12,500) dollars, or any other sum in excess of the alleged agreed rate to its or any damage in the sum of twelve thousand five hundred (12,500) dollars, or any other sum or at all.

Denies that said rates so or at all paid by libelant for transportation of said or any commodity were or constituted the or any reasonable or prevailing market rates for said or any commodity from San Francisco to Kobe or Yokohama, Japan, at the earliest or any date after the breach or alleged breach of said or any agreement it was possible for libelant to secure other or any space or transportation therefor.

Denies that all or singular the premises are true.

In answer to the third and separate cause of libel in said libel contained, libelee avers that it has no information or belief sufficient to enable it to answer the allegations contained in paragraph I of said third cause of libel, and [17] basing its denial upon this ground, denies each and every all and singular the allegations contained therein and each and every part thereof.

Denies that heretofore or on or about the 22d day of June, 1917, or at any other time or at all, libelee agreed with libelant to reserve any space for the or any transportation of or to transport or cause to be transported 750 tons or any other quantity of tinplate or any other commodity a month for September or October or November or December, 1917, clearance to Shanghai, at the or any rate of \$16.00

per ton, or at any other price at all, weight or measurement ship's option.

Denies that libelee did not reserve steamer space for said or any commodity or any part thereof.

Denies that during the months of September or October or November or December, 1917, or during each of said or any months libelant tendered 750 tons of tinplate or any other quantity thereof for transportation to Shanghai or demanded steamship space therefor in conformity with the terms of said or any agreement. Denies that libelee failed or neglected or refused to accept for transportation or to furnish steamship space for or to transport or cause to be transported said 750 tons of tinplate or any other quantity thereof during said months or at all in conformity with said or any agreement.

Denies that libelee, through the breach of said alleged or any agreement, was obliged to or did procure other transportation therefor, or was obliged or did pay the or any rate of \$22.50 per ton from San Francisco to Shanghai for said or any tinplate or the whole thereof to its damage in the sum of nineteen thousand five hundred (\$19,500) dollars or any other sum at all. [18]

Denies that said or any rate so or at all paid by libelant for transportation of said or any commodity was or constituted the or any reasonable or prevailing market rate for said commodity from San Francisco to Japan at the earliest or any date after the breach or alleged breach of said or any agreement it was possible for libelant to secure

other or any space or transportation therefor.

Denies that all or singular the premises are true.

WHEREFORE, libellee prays that libelant be caused to answer on oath or solemn affirmation the interrogatories propounded by libelee to it attached hereto and made a part hereof, and that this Honorable Court thereafter dismiss the libel and each cause of libel therein contained, with costs of suit to libelee.

FORD & JOHNSON.

Proctors for Libelee. [19]

State of California,

City and County of San Francisco,—ss.

G. L. King, being first duly sworn, deposes and says: That he is assistant secretary of the Southern Pacific Company, a corporation, defendant in the above-entitled action; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information or belief, and as to those matters he believes it to be true.

G. L. KING.

Subscribed and sworn to before me this 20th day of April, 1920.

[Seal]

FRANK HARVEY,

Notary Public in and for the City and County of San Francisco, State of California. [20]

**Answers to Interrogatories Propounded to Libelee.**

Answer to Interrogatory No. 1:

J. G. Stubbs was employed by the libelee during the month of June, 1917.

Answer to Interrogatory No. 2:

J. G. Stubbs was employed during the month of June, 1917, by the libelee as assistant general freight agent. [21]

**Interrogatories to be Propounded to Libelant.**

1. Was the alleged contract referred to in the first cause of libel of a date on or about the 22d day of June, 1917, a verbal contract or a written one?
2. If your answer to the first interrogatory is that it was written, please attach a copy thereof; if the same is in one part or if the same is made up of various instruments attach copies of all writings alleged to compose said contract.
3. Is the alleged contract referred to in the second cause of libel of a date on or about June 28, 1917, a verbal contract or is it in writing?
4. If the answer to the third interrogatory is that the contract is written, please attach copies of all writings alleged to compose said contract.
5. Is the alleged contract referred to in the third cause of libel of a date on or about the 22d day of June, 1917, oral, or is said contract in writing?
6. If your answer to the preceding interrogatory is that said contract was in writing, please attach copies of all writings alleged to compose said contract.

[Endorsed]: Filed Apr. 22d, 1920. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [22]

In the Southern Division of the United States District Court of the Northern District of California, First Division.

IN ADMIRALTY—No. 16,755.

IN PERSONAM.

BALDWIN SHIPPING COMPANY, INC., a Corporation,

Libelant,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,

Libelee.

**Libelant's Answers to Interrogatories Propounded by Libelee.**

Answer to Interrogatory No. 1:

Written.

Answer to Interrogatory No. 2:

Letters exchanged between the parties hereto as follows:

“SOUTHERN PACIFIC COMPANY.

San Francisco, Cal., June 22nd, 1917.

No. 1.—E.—Contract 608.

Baldwin Shipping Company,

433 California St.

San Francisco, Cal.

Gentlemen:—

Confirming Phone Conversation.

We have booked for your account 2000 tons of pig iron and steel articles, in excessive sizes, Japan

late July August September, at \$15.00 per ton, weight or measurement, ship's option.

This will be covered by Southern Pacific Contract 608.

Kindly confirm in writing.

Yours truly,

(Signed) J. G. STUBBS." [23]

“BALDWIN SHIPPING COMPANY.

San Francisco, June 26th, 1917.

S. F. 1112.

Subject—2,000 tons steel articles—Japan.

Mr. J. G. Stubbs, G. F. A.,

Southern Pacific Co.,

San Francisco, Calif.

Dear Sir:

This will acknowledge receipt of your letter of June 22nd, File 1—E, contract 608, booking for the account of the Baldwin Shipping Company, 2,000 tons pig iron and steel articles, in excessive sizes, Japan late July, August and September clearance at ocean rate of \$15.00 per ton, weight or measurement, ship's option,—covered by your contract 608.

You have advised us that just at the present time you cannot divulge to us name of steamer line with whom you have booked these 2,000 tons steel articles, but that you guarantee to protect \$15.00 rate, and clear on first-class steamers carrying lowest rate of insurance, however, as soon as you are able to advise us with whom you have booked this freight; please do so in order that we may give instructions to our New York office, relative to the issuance of the bills of lading.

We will keep you advised of the forwarding of this business from the mills, and, if we can be of any further assistance to you, do not fail to let us know.

Yours truly,  
(Sgd.) BALDWIN SHIPPING CO.  
J. H. S.

CC—Ny. In routing this business do not fail to see that the S. P. is the terminal delivery line.”  
[24]

Answer to Interrogatories Nos. 3 and 4:

A verbal agreement was made after which the following writings were exchanged:

“SOUTHERN PACIFIC COMPANY.

1-E Iron & Steel Contract 613.

San Francisco, Calif., June 28th, 1917.

Messrs. G. R. Haley & Company,

149 California street,

San Francisco, Calif.

Gentlemen:

Confirming phone conversation date:

Please book for the Southern Pacific 2,500 tons Pig Iron and Steel articles for August and December clearance to Kobe and Yokohama at \$15.00 weight or measurement, ship's option.

This will be covered by Southern Pacific contract 613.

I am attaching hereto an extra copy of this let-



ter and would thank you to place acknowledgment thereon and return.

Yours truly,

J. G. STUBBS.

J.M.H.

Enclosures.

CC—Baldwin Shipping Co.,  
433 California St., City.”

“BALDWIN SHIPPING COMPANY.

June 28, 1917.

S. F. 1113.

Mr. J. G. Stubbs, G. F. A.,  
Southern Pacific Company,  
San Francisco, Cal.

Dear Sir:—

This will confirm telephone conversation with your Mr. Brown, booking firm for the account of the Baldwin Shipping Company, 2,500 tons of steel articles, in excessive sizes, destined Kobe-Yokohama, for clearance from San Francisco, August [25] to December, inclusive, 1917, at ocean rate of \$15.00 weight or measurement, ship's option, covered by your contract No. 613.

You advise that you protect ocean rate of \$15.00 per ton, and to clear on first-class steamers, carrying lowest rate of insurance, however, at the earliest possible date would thank you to advise steamer line with which you booked these 2500 tons, so that we can instruct our New York office relative to issuance of bills of lading.

Please acknowledge.

Yours truly,  
BALDWIN SHIPPING CO.,  
(Sgd.) J. H. SIMMONS,  
Vice-pres."

Answer to Interrogatory No. 5.

Writing.

Answer to Interrogatory No. 6.

"SOUTHERN PACIFIC COMPANY.

San Francisco, Cal., June 22nd, 1917.

1-E—Contract 607.

Baldwin Shipping Company,

433 California St.,

San Francisco, Cal.

Gentlemen:—

Referring to our phone conversation we have booked for your account 750 tons of tinplate a month from September October November and December to Shanghai at \$16.00 per ton weight or measurement ship's option.

This will be covered by Sou. Pac. Contract 607.

Kindly confirm in writing.

Yours truly,  
(Signed) J. G. STUBBS." [26]

"June 26th, 1917.

Tinplate.

Subject—3,000 Tons Tinplate—Shanghai.

Sept. to Dec. 1917, Inc.

Mr. J. G. Stubbs, G. F. A.,

Southern Pacific Co.,

San Francisco, Cal.

Dear Sir:—

This will acknowledge receipt of your letter of

June 22nd, File 1—E Contract #607, booking for the account of the Baldwin Shipping Company 750 tons tinplate per month, September, October, November and December, 1917, at ocean rate of \$16.00 per ton, weight or measurement, ship's option,—destined Shanghai and covered by your Contract No. 607.

You have advised us that at the present time you cannot inform us of the name of line with which you have booked this 3,000 tons of tinplate, but guarantee to clear on first-class steamers carrying lowest rate of insurance, and to protect the above rate,—this is agreeable to us, however, at the earliest possible date let us know with whom you have booked this business so that we can give instructions to our New York office, relative to issuance of the bills of lading.

We will keep you advised of the forwarding of this business from the mills, and, if we can assist you in any way, do not fail to let us know.

Yours truly,

BALDWIN SHIPPING COMPANY.

J. H. SIMMONS,

Vice-pres.

cc—NY.

Chge. In taking out ladings on this business see that So. Pac. is the Terminal delivery line." [27]

State of California,

City and County of San Francisco,—ss.

F. E. Ragland, being first duly sworn, deposes and says:

That he is agent of libelant in the State of Cali-

fornia and makes this verification on its behalf; that the foregoing answers to interrogatories are true to the best of affiant's knowledge, information and belief.

F. E. RAGLAND.

Subscribed and sworn to before me this 22d day of April, A. D. 1920.

[Seal] W. H. PYBURN,  
Notary Public in and for the City and County of  
San Francisco, State of California.

Due service and receipt of a copy of the within answers to interrogatories is hereby admitted this 22d day of April, 1920.

FORD & JOHNSON,  
Attorneys for Libelee.

[Endorsed]: Filed Apr. 22, 1920. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [28]

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In the Southern Division of the United States District Court of the Northern District of California, First Division.

IN ADMIRALTY—No. 16,755.

IN PERSONAM.

BALDWIN SHIPPING COMPANY, INC., a  
Corporation,

Libelant,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,  
Libellee.

Libellee.

**Amendment to Answer to Amended Libel.**

Comes now the libelee and by leave of Court first had and obtained, files this its amendment to the answer to the amended libel herein, and by way of further answer in connection with the allegations of said amended libel numbered therein Paragraph II in the first, second and third causes of libel as contained therein, avers:

That the libelee was, on or about the 22d day of June, 1917, and on or about the 28th day of June, 1917, and at all times in said amended libel mentioned, and for a long time prior thereto, a common carrier engaged in interstate commerce in the United States of America. That at the said times the libelee did not own, control or operate any steamship or steamship line between the ports of San Francisco, State of California, or any Pacific Coast port and any port in Japan, or between the port of San Francisco and the Ports of Kobe or Yokohama, Japan, or between the port of San Francisco or any Pacific Coast Port and the Port of Shanghai in China, and did not own, operate or control any means of transportation between said ports, or any of them, at any time mentioned in [29] said libel or particularly during the months of June, July, August, September, October, November and December, in 1917, and that libelee has never published or filed with the Interstate Commerce Commission of the United States of America a through rate from any Pacific Coast Port, or particularly the Port of San Francisco, California, and any for-

eign port, or particularly ports of Japan and China.

WHEREFORE, libelee prays that this Honorable Court dismiss the libel and each cause of libel therein contained, with costs of suit to libelee.

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Proctors for Libelee. [30]

State of California,

City and County of San Francisco,—ss.

G. L. King, being first duly sworn, deposes and says: That he is Assistant Secretary of the Southern Pacific Company, a corporation, the defendant in the above-entitled action; that he has read the foregoing amendment to answer and knows the contents thereof; that the same is true of his own knowledge, except as to matters which are therein stated on information or belief, and as to those matters he believes it to be true.

G. L. KING.

Subscribed and sworn to before me, this 19th day of August, 1920.

[Seal] FRANK HARVEY,  
Notary Public, in and for the City and County of  
San Francisco, State of California.

[Endorsed]: Filed Aug. 19, 1920. W. B. Mal-  
ing, Clerk. By C. W. Calbreath, Deputy Clerk.  
[31]

At a stated term of the District Court of the United States, for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, State of California, on Thursday, the nineteenth day of August, in the year of our Lord one thousand nine hundred and twenty. Present: The Honorable FRANK H. RUDKIN, District Judge.

No. 16,755.

BALDWIN SHIPPING CO.

vs.

SOUTHERN PACIFIC CO.

**Minutes of Court—August 19, 1920—Trial.**

This cause came on regularly this day for hearing of the issues joined herein. H. W. Glensor, Esq., and Ernest Clewe, Esq., were present as proctors on behalf of libelant. George Ford, Esq., and F. Johnson, Esq., were present as proctors for respondent. The respective proctors made statements of the nature of the cause. Mr. Glensor introduced in evidence and filed the depositions of Glenna De Witt Green and John Gray Stubbs, and called Mrs. G. De Witt Green, who was duly sworn and examined on behalf of libelant and introduced in evidence certain exhibits which were filed and marked Libelant's Exhibits Nos. 1 and 2 (letters), and thereupon rested cause on behalf of libelant.

Mr. Ford called Percy P. Dougherty, S. W. Brown, L. S. Boyson and R. Roche, each of whom was duly sworn and examined on behalf of re-

spondent and thereupon rested cause on behalf of respondent.

Mr. Glensor called in rebuttal F. E. Ragland, who was duly sworn and examined, and thereupon rested libelant's case. After hearing the respective proctors, the Court ordered that this cause be submitted on points and authorities to be filed in 10, 10 and 5 days. [32]

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In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 16,755.

BALDWIN SHIPPING COMPANY, INC., a  
Corporation,

Libelant,

vs.

SOUTHERN PACIFIC COMPANY, a Corpora-  
tion,

Respondent.

**(Deposition of Glenna De Witt Green, Taken on  
Behalf of Libelant.**

BE IT REMEMBERED: That on Monday, June 28, 1920, pursuant to stipulation of counsel hereunto annexed, at the offices of H. W. Glensor, Esq., in the Mills Building, in the City and County of San Francisco, State of California, personally appeared before me, Francis Krull, a United States Commissioner for the Northern District of Cali-



ifornia, authorized to take acknowledgments of bail and affidavits, etc., GLENNA DE WITT GREEN, a witness called on behalf of the libelant.

H. W. Glensor, Esq., appeared as proctor for the libelant, and George Ford, Esq., appeared as proctor for the respondent, and the said witness having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid, did thereupon depose and say as is hereinafter set forth.

(It is hereby stipulated and agreed by and between the proctors for the respective parties that the deposition of the above-named witness may be taken *de bene esse* on behalf of the libelant at the offices of H. W. Glensor, Esq., in the Mills Building, in the City and County of San Francisco, State of California, on Monday, June 28, 1920, before Francis Krull, [33] a United States Commissioner for the Northern District of California, and in shorthand by E. W. Lehner.

(It is further stipulated that the deposition, when written up, may be read in evidence by either party on the trial of the cause; that all questions as to the notice of the time and place of taking the same are waived, and that all objections as to the form of the questions are waived unless objected to at the time of taking said deposition, and that all objections as to the materiality and competency of the testimony are reserved to all parties.

(It is further stipulated that the reading over of the testimony to the witness and the signing thereof are hereby expressly waived.) [34]

(Deposition of Glenna De Witt Green.)

GLENNA DE WITT GREEN, called as a witness for the libelant, sworn.

Mr. GLENSOR.—Q. Mrs. Green, where do you reside? A. 1077 Ashbury Street.

Q. San Francisco? A. San Francisco.

Q. Were you ever employed by the Baldwin Shipping Company? A. Yes.

Q. Where? A. San Francisco.

Q. In their San Francisco office? A. Yes.

Q. When?

A. From about October, 1916, until December, 1919.

Q. In what capacity were you employed?

A. Secretary to the general manager.

Q. In your capacity as secretary to the general manager, did you or did you not have occasion to make booking contracts and negotiate booking contracts for ocean space?

A. I did; I had occasion to; in fact, I made a great many.

Q. I show you a document purporting to be a letter marked "No. 1 E Contract 607," and ask you if you ever saw that document before.

A. Yes.

Q. Where?

A. At the office of the Baldwin Shipping Company.

Q. Where did it come to you from?

A. From the Southern Pacific Company.

Q. Through the mails?

A. Through the mails.

(Deposition of Glenna De Witt Green.)

Q. That is dated June 22, 1917, No. 1 E Contract 607, and reads as follows:

“In reply please refer to No. 1 E Contract 607, San Francisco, Cal., June 22, 1917.

“Baldwin Shipping Company,

“433 California Street,

“San Francisco, Cal.

“Gentlemen:

“Referring to our 'phone conversation, we have booked for your account 750 tons of tin plate a month for September, [35] October, November and December to Shanghai at \$16 a ton, weight or measurements, ship's option.

“This will be covered by Sou. Pac. Contract No. 607.

“Kindly confirm in writing.

“Yours truly,

“J. G. STUBBS,

“L. F. B.”

A. Yes.

Q. I show you this document and ask you if you ever saw that before. A. Yes.

Q. Where? A. I wrote the letter myself.

Q. This purports to be a carbon copy. Did you write the original and make a copy at the same time? A. Surely.

Q. What did you do with the original?

A. I sent it to the office of J. G. Stubbs, of the Southern Pacific Company.

Q. Did you mail it yourself? A. Yes.

Q. Did you sign it yourself? A. Yes.

(Deposition of Glenna De Witt Green.)

Q. What name did you sign to it?

A. "J. H. Simmons, per D."

Q. The "D." meaning yourself? A. Yes.

Q. Was that the customary manner of handling these bookings at that time? A. Yes.

Mr. GLENSOR.—I will ask that the first letter shown the witness be marked "Libelant's Exhibit 1 for Identification," and the last letter "Libelant's Exhibit 4 for Identification."

(The letters were so marked.)

Q. Now, I call your attention to Libelant's Exhibit 1 for Identification, being the letter which I showed you a moment ago, and call your attention to the first line, which says, "Referring to our phone conversation"; did you, yourself, have the conversation referred to in that letter? A. Yes.

Q. Who with?

A. Well, with the booking agent in Mr. Stubbs' office of the Southern Pacific Company.

Mr. GLENSOR.—I will offer these letters in evidence and [36] ask that they be marked Libelant's Exhibits 1 and 2.

(The letters were marked Libelant's Exhibits 1 and 2.)

Q. Now, I show you a document on the letterhead of the Southern Pacific Company, marked "Libelant's Exhibit No. 2 for Identification," contract 1 E. 608, and ask you if you ever saw that document before? A. Yes.

Q. Where?

(Deposition of Glenna De Witt Green.)

A. At the office of the Baldwin Shipping Company.

Q. How did you get it?

A. Received it from Mr. Stubbs' office.

Q. How, by mail? A. By mail.

Q. I invite your attention to the first line, which says, "Confirming phone conversation"; did you have the phone conversation yourself? A. Yes.

Q. Who with, do you know?

A. I believe Mr. Brown.

Q. Do you know who he was?

A. He was representing Mr. Stubbs' office, making bookings for the account of the Southern Pacific Company.

Q. Had you had dealings with him before in that capacity? A. Yes.

Q. Over how long a period of time?

A. Well, I do not just exactly recall; I should say two or three months, perhaps; they changed these booking agents in the Southern Pacific quite frequently.

Q. I call your attention to this document and ask you if you ever saw this before? A. Yes.

Q. Where did you see it?

A. In the office of the Baldwin Shipping Company.

Q. Who wrote it? A. I wrote the letter myself.

Q. What did you do with the original?

A. I sent it to Mr. Stubbs' office, of the Southern Pacific Company.

Q. Did you mail it yourself? A. Yes. [37]

(Deposition of Glenna De Witt Green.)

Q. Was that letter written after receipt of the letter marked "Libelant's Exhibit 2 for Identification"?

A. Yes.

Q. It was in reply to it: Is that the idea?

A. Yes, it was acknowledging that letter.

Mr. GLENSOR.—I offer in evidence these two letters, and ask that they be marked "Libelant's Exhibit 3" and "Libelant's Exhibit 4" in evidence.

(The letters were marked Libelant's Exhibits 3 and 4.)

Q. Now, I show you a carbon copy of a letter on the letterhead of the Southern Pacific Company, marked "1 E. Iron and Steel Contract 613," also marked "Libelant's Exhibit 3 for Identification," and ask you if you ever saw that before?

A. Yes.

Q. Where?

A. In the office of the Baldwin Shipping Company.

Q. Where did you get it?

A. It was sent to the Baldwin Shipping Company by Mr. Stubbs' office.

Q. By mail? A. Yes.

Q. I now show you this document and ask you if you ever saw that before? A. Yes.

Q. It purports to be a carbon copy of a letter addressed to Mr. J. G. Stubbs, dated June 28, 1917; did you ever see that before? A. Yes.

Q. Where?

A. In the office of the Baldwin Shipping Company.

(Deposition of Glenna De Witt Green.)

Q. Do you know who wrote the original letter of which that is a copy?     A. I did.

Q. Who signed it?     A. I did.

Q. Who mailed it?     A. I did.

Q. Who did you mail it to?

A. To Mr. Stubbs, of the Southern Pacific Company.

Q. The person whose name and address it bears?

A. Yes.

Q. Did you mail it before or after the receipt of this other [38] letter marked "Exhibit 3 for Identification"?

A. Before.

Q. Before?     A. Yes.

Q. I call your attention to the first line, which says, "This will confirm telephone conversation with your Mr. Brown"; do you know who held that conversation with Mr. Brown?     A. I did.

Q. Where?

A. In the office of the Baldwin Shipping Company, over the telephone.

Q. Where was Mr. Brown? You don't know where Mr. Brown was—he was on the other end of the phone?

A. He was on the other end of the phone, apparently at the Southern Pacific Company.

Q. Did you call him, or he call you?

A. I believe Mr. Brown called me.

Q. Did you have one or more conversations with Mr. Brown?     A. More than one.

Q. In regard to this transaction I mean, of course.

A. Yes.

(Deposition of Glenna De Witt Green.)

Q. Where was the other? You say you had more than one. Where was the other conversation?

A. In the office, over the phone.

Q. Were all your conversations with Mr. Brown over the phone?

A. Yes, with the exception of one.

Q. Where did that one take place?

A. In the office of the Baldwin Shipping Company.

Q. Did Mr. Brown call there? A. Yes.

Q. Did all of these conversations to which you have just testified with Mr. Brown relate to this transaction covered by these two letters, that is, the booking of 2,500 tons of iron and steel articles in excessive sizes for Kobe and Yokohama? A. Yes.

Q. Fix the first conversation, in point of time, that you had with Mr. Brown in regard to the transaction, and say what [39] was said by Mr. Brown and what was said by you.

A. Well, I telephoned the Southern Pacific Company, asking for Mr. Brown, and offered him these 2,500 tons of iron and steel articles for booking to Japan, and he said "All right," he would let me know if he could book them for me.

Q. That was your first conversation?

A. That was our first conversation; that was the usual method of procedure.

Q. When was your next conversation?

A. Well, later on, I don't know whether it was the same day, or the next day—it took, I think, about three days before he was finally successful in



(Deposition of Glenna De Witt Green.)

placing the booking, and he seemed to have a hard time, as it were, getting this space; finally, he came in and asked about the iron and steel, was it in excessive sizes, were there any excessive sizes in the shipment, and I told him, no, they were not in excessive sizes, so then he told me that he thought he would be able to book it, and he went out and in about a couple of hours later on the same day he advised me that he had made the booking.

Q. Advising you how, by phone?

A. Over the phone.

Q. What did he say?

A. He said he had booked that 2,500 tons of iron and steel for us, and I asked him on what steamer, and what company, and he told me that he could not tell me that, but that he guaranteed that it was an A—No. 1 steamship line, operating steamers carrying the highest rate of insurance.

Q. That is, the lowest premium? A. Yes.

Q. And the highest class of insurance?

A. I mean the highest class of insurance.

Q. Then what occurred with reference to these letters, if anything?

A. Then immediately, as soon as they would phone that [40] they had made a booking, I would confirm that telephone conversation.

Q. What did you do in this particular case?

A. That is what I did in this instance, confirmed it by letter.

Q. By the letter there? A. Yes.

Q. You mailed the original? A. Yes.

(Deposition of Glenna De Witt Green.)

Q. When I said "that letter," I mean this letter of June 28, 1917, addressed to Mr. Stubbs. That is the one you sent? A. Yes.

Q. When did you receive this one here that is marked "Libelant's Exhibit 3 for Identification"?

A. Well, the next day, I believe.

Mr. GLENSOR.—I will offer these two documents in evidence as Libelant's Exhibits 5 and 6.

(The letters were marked Libelant's Exhibits Nos. 5 and 6.)

Q. Mrs. Green, were any of these article brought to San Francisco? A. Yes, all of them.

Q. Were any of them moved in this space that was booked by the Southern Pacific Company?

A. I do not think so.

Q. That would be a matter of looking up the records of the Baldwin Shipping Company before you could testify to that? A. Yes.

Mr. GLENSOR.—That is all.

Cross-examination.

Mr. FORD.—Q. Mrs. Green, are you speaking of your own knowledge when you say these articles came to San Francisco? A. Yes.

Q. Did you see them? A. I traced all the cars.

Q. Did you see the shipments?

A. The bills of lading covering them. [41]

Q. I mean, did you see the shipments, not the bills of lading? A. No.

Q. Naturally, you saw the bills of lading?

A. Yes.

Q. You did not have anything to do with seeing

(Deposition of Glenna De Witt Green.)

the articles themselves? A. Why, no.

Q. When you say you wrote, signed and mailed these letters, which you have mentioned, are you giving your recollection in each particular instance that you wrote, signed and mailed the letters? You handled a great many transactions, didn't you?

A. Yes.

Q. Did you make it a practice to mail the letters yourself? A. I did, at that time.

Q. Why in this particular instance, as compared with any other? A. I mailed all of my letters.

Q. You mailed all the letters; you mean you took them out and put them in the box? A. Yes.

Q. When you say you wrote them, do you mean you dictated them, or did you write them yourself?

A. I wrote them myself, because I was the only one in the office.

Q. Who was the general manager during the period you have been discussing here, referring to June, 1917? A. J. H. Simmons.

Q. Were you doing this under Mr. Simmons' directions, or yourself, personally?

A. Mr. Simmons was out of town.

Q. He was not here at that time? A. No.

Q. So you were in charge?

A. Yes, of the office.

Q. How long was Mr. Simmons gone?

A. I do not exactly recall; I think about a month.

Q. Was this the usual procedure when you were asked for this space? A. Yes. [42]

Q. Was it your habit to ask the Southern Pacific

(Deposition of Glenna De Witt Green.)

to book the space for you?     A. It was.

Q. How long a time had that been your practice?

A. I think it was the practice for years.

Q. Was there anything unusual about this particular instance or had you previously been given the names of the vessels on which the bookings would be made?

A. No. These were the first bookings that the Baldwin Shipping Company had ever made through the Southern Pacific Company.

Mr. FORD.—Mr. Reporter, will you read back the last three or four questions and answers?

(The record was here read by the reporter.)

A. I mean it was the practice of the forwarding agents and the exporters to call the various railroads and offer them this cargo.

Q. Mrs. Green, I am not asking you what the practice of the exporters and importers was; I am asking you, in this particular position you were in, had that been your practice previously, to call up someone in the Southern Pacific and ask for these bookings, or had it not been?

A. Well, this was the first time we had ever done it.

Q. That is what I was asking you before. You understand, I am a sort of a rank outsider; I do not understand this matter at all, and your testimony is going to be used against us in court, and I want you to be careful what you say. This was your first experience?

A. My first experience, yes.

(Deposition of Glenna De Witt Green.)

Q. I notice in the letter from your company to the Southern Pacific Company there is nothing said about—that they are unable to divulge to you the name of the steamer, etc., but that is contained in your letters. You say you gathered [43] that information from a conversation that you had with Mr. Brown?      A. Yes.

Q. He told you he was unable to divulge that?

A. Yes.

Q. Did he tell you why?

A. No, he did not tell us why, at all.

Q. Did you know why?      A. No, I did not.

Q. Do you recognize this Exhibit 3?      A. Yes.

Q. Where did you see that before?

A. In the office of the Baldwin Shipping Company.

Q. Did that refer to any of these contracts?

A. It did; it referred to the booking of 2,500 tons of iron and steel articles which they had made for our account—which the Southern Pacific Company had made for our account.

Q. This told you what they had done, did it not?

A. Yes.

Q. How did you happen to have that letter in your files?

A. The Southern Pacific Company sent it to us.

Q. Did that give you the information you desired, or did it not?      A. No, it did not.

Q. You knew what the Southern Pacific Company had done, did you?

A. When I received that letter.

(Deposition of Glenna De Witt Green.)

Q. And that letter was received on or about June 28, 1917?    A. About that time, yes.

Q. What did you do when you received this letter of June 28, 1917, addressed to Messrs. C. R. Haley & Co., by Mr. Stubbs?

A. I simply kept it as a matter of record.

Q. Did you do anything about determining where this space had been reserved—what Mr. Haley had done?

A. No, because we booked directly with the Southern Pacific Company and when we made this booking we did not know where the Southern Pacific Company were placing the booking. We proceeded directly with the company. [44]

Q. When you got this letter, I am referring to.

A. Did I take any proceedings?

Q. Yes.    A. No, I did not.

Q. The fact of the matter is, some of these letters of yours were written on advice, were they not?

A. How do you mean?

Q. Weren't they written on the advice of an attorney?    A. Positively not.

Q. Was there any of the correspondence with the Southern Pacific Company written on the advice of any attorney?    A. None of these letters.

Q. Any letters?    A. Not that I know of.

Q. Were you ever advised concerning any correspondence?    A. Positively not.

Q. This is simply your own procedure?

A. My own procedure under instructions of our general manager.

(Deposition of Glenna De Witt Green.)

Q. Did I understand you— I think you said the general manager was not there.

A. When he was there, I was acting under instructions from him, as to how to make these bookings.

Q. Did you understand, when you got this letter of June 28th that that was what had been done as to this space that you had asked to have booked?

A. From that letter, naturally.

Q. You simply put the letter in your files?

A. Yes, and waited until the general manager returned and showed it to him.

Q. Did you know who C. R. Haley & Co. were?

A. I did not know them at that time at all.

Q. How long after that did your general manager return?

A. I think he was gone about a month, as I said before; I do not recall when Mr. Simmons returned.

Q. Did you receive the same form letter as this one I have shown you, Exhibit 3, as to each of these shipments? [45]

A. No, I don't think we did. That was the first one we received, I think.

Q. When you received that one, did you make any inquiry of Mr. Brown, or whomsoever you were dealing with, as to the method of procedure he had followed in each case?

A. No, I did not, because, as I said, I simply took that letter as a matter of record, and put it on file and showed it to the general manager, as that was something for him to transact, and not for me. I

(Deposition of Glenna De Witt Green.)

was simply instructed to make the bookings.

Q. Had you booked any ocean space before that?

A. Yes.

Q. I mean before this transaction with the Southern Pacific Company, had you made any bookings before that, yourself? A. I do not think so.

Q. You answered a moment ago that this was the first transaction you had with the Southern Pacific.

A. Whether our office had made a couple of minor bookings with the Southern Pacific, I do not recall, but these were the first large bookings that I had ever handled; if Mr. Simmons had made any I would not be cognizant of it.

Q. You don't know anything about when this freight arrived in San Francisco, that is mentioned here?

A. Other than for clearance—it was booked for clearance during certain periods.

Q. But you don't know of your own knowledge when it arrived? A. Sometime around in August.

Mr. GLENSOR.—Q. Mrs. Green, as this freight arrived, carload by carload, the railroad companies would send you notice of its arrival, would they not?

A. Yes.

Q. You kept copies of the bills of lading?

A. Yes.

Q. And those arrivals are, so far as you know, of record [46] in the office of the Baldwin Shipping Company, and also in the Southern Pacific?

A. Yes.

Mr. GLENSOR.—That is all.

Mr. FORD.—That is all. [47]



United States of America,  
State and Northern District of California,  
City and County of San Francisco,—ss.

I certify that, in pursuance of stipulation of counsel, on Monday, June 28, 1920, before me, Francis Krull, a United States Commissioner for the Northern District of California, at San Francisco, at the offices of H. W. Glensor, Esq., in the Mills Building, in the City and County of San Francisco, State of California, personally appeared Glenna De Witt Green, a witness called on behalf of the libelant, and H. W. Glensor, Esq., appeared as proctor for the libelant, and George Ford, Esq., appeared as proctor for the respondent, and the said witness having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in said cause, deposed and said as appears by her deposition hereto annexed.

I further certify that the deposition was then and there taken down in shorthand notes by E. W. Lehner, and thereafter reduced to typewriting; and I further certify that by stipulation of the proctors for the respective parties, the reading over of the deposition to the witness and the signing thereof were expressly waived.

Accompanying said deposition and referred to and specified therein are Libelant's Exhibits 1 to 6, inclusive.

And I do further certify that I have retained the said deposition in my possession for the purpose of delivering the same with my own hands

to the clerk of the United States District Court for the Northern District of California, the court for which the same was taken.

And I do further certify that I am not of counsel, nor [48] attorney for either of the parties in said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

IN WITNESS WHEREOF, I have hereunto set my hand in my office aforesaid this 6th day of July, 1920.

[Seal] FRANCIS KRULL,  
United States Commissioner, Northern District of  
California, at San Francisco.

[Endorsed]: Filed Aug. 19, 1920. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [49]

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In the District Court of the United States for the  
Southern Division of the Northern District of  
California, First Division.

No. 16,755.

BALDWIN SHIPPING COMPANY, INC., a  
Corporation,

Libellant,

vs.

SOUTHERN PACIFIC COMPANY, a Corpora-  
tion,

Respondent.

**(Deposition of John Gray Stubbs, Taken on Behalf  
of Libelant.)**

BE IT REMEMBERED: That on Wednesday, June 16, 1920, pursuant to stipulation of counsel hereunto annexed, at the offices of H. W. Glensor, Esq., in the Mills Building, in the City and County of San Francisco, State of California, personally appeared before me, Francis Krull, a United States Commissioner for the Northern District of California, authorized to take acknowledgments of bail and affidavits, etc., JOHN GRAY STUBBS, a witness called on behalf of the libelant.

H. W. Glensor, Esq., appeared as proctor for the libelant, and George Ford, Esq., appeared as proctor for the respondent, and the said witness having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, did thereupon depose and say as is hereinafter set forth.

(It is hereby stipulated and agreed by and between the proctors for the respective parties that the deposition of the above-named witness may be taken *de bene esse* on behalf of the libelant at the office of H. W. Glensor, Esq., in the Mills Building, in the City and County of San Francisco, State of [50] California, on Wednesday, June 16, 1920, before Francis Krull, a United States Commissioner for the Northern District of California, and in shorthand by E. W. Lehner.

It is further stipulated that the deposition, when written up, may be read in evidence by either party

(Deposition of John Gray Stubbs.)

on the trial of the cause; that all questions as to the notice of the time and place of taking the same are waived, and that all objections as to the form of the questions are waived unless objected to at the time of taking said deposition, and that all objections as to materiality and competency of the testimony are reserved to all parties.

It is further stipulated that the reading over of the testimony to the witness and the signing thereof are hereby expressly waived.) [51]

JOHN GRAY STUBBS, called for the libelant, sworn.

Mr. GLENSOR.—Q. Mr. Stubbs, where do you reside?

A. My business address is at San Francisco; my residence is in Oakland.

Q. What is your business?

A. I am traffic manager for the Java, China, Japan line and employed by J. D. Spreckles & Brothers Company, who are the general agents for that line.

Q. Were you ever employed by the Southern Pacific Company? A. Yes.

Q. In what capacity?

A. In various clerical capacities, finally as General Freight Agent, with headquarters at San Francisco.

Q. Were you the General Freight Agent for that company during the year 1917?

A. Yes, from 1915 to February, 1919, at San Francisco.

(Deposition of John Gray Stubbs.)

Q. As General Freight Agent the movement of freight of all classes came under your jurisdiction, did it not?

A. Well, I can hardly say that my jurisdiction was quite as broad as that.

Q. The movement of freight from a commercial point of view came under your jurisdiction, did it not?

A. Only within certain very definite limits. Perhaps I might elaborate on that a little.

Q. I wish you would.

A. The Southern Pacific Company, Pacific System, has three General Freight Agents, one at Portland, with jurisdiction in Oregon, one at San Francisco, with jurisdiction in California, north of Santa Barbara and Mohave, and including Nevada and Utah, and one at Los Angeles, with [52] jurisdiction west of El Paso and south of Mohave and Santa Barbara. Now those three General Freight Agents while directly in charge of their immediate territories were of course subject to the jurisdiction of their superior officers of the traffic department, the Assistant Traffic Manager and the Traffic Manager at San Francisco.

Q. Who was the Freight Traffic Manager at San Francisco at that date?     A. G. W. Luce.

Q. G. W. Luce?     A. Yes.

Q. The matter of securing freight traffic came under your jurisdiction and was a part of your activities, was it not?

(Deposition of John Gray Stubbs.)

A. Solicitation was a part of my duties and activities; yes.

Q. And as a matter of fact, you used to as a practice, if you would get information of any freight for movement from a point in the east outside of your own particular territory to a point in your territory or for export through this port, you got behind that and tried to secure the freight for your line, did you not?

A. We always solicited that competitive business, yes.

Q. You had as a part of your organization, of your particular office, what was known as an export department, didn't you, or an export desk?

A. Yes.

Q. Was that also known as the shipping desk or did you have another department for the shipping desk?

A. No, that was generally referred to in our office as the foreign desk.

Q. The foreign desk?

A. It was a part of the general freight office but known in the office as the foreign desk.

Q. Just a colloquial method of designating that particular desk; is that it? A. Yes. [53]

Q. That was a part of your own office, was it not, over which you had jurisdiction?

A. That so-called import or export or foreign desk was more immediately and particularly under my jurisdiction.

Q. Now, the matter of handling freight traffic

(Deposition of John Gray Stubbs.)

that originated at points either in or east of your territory that cleared and was delivered to ships through this port was handled over that desk, was it not?

A. They handled the detail of that work, yes.

Q. Now, did you have a man under you in your employ during that time by the name of L. F. Boyson? A. Yes.

Q. What was his position?

A. He was a clerk on that desk and my recollection is that for a few months he was at the head of the desk; the precise period I cannot give you.

Q. Did you also have a man in your employ by the name of J. M. Hoffer?

A. I don't recall that name.

Q. You have no recollection of Mr. Hoffer?

A. I do not place him.

Q. Now, as a matter of practice, Mr. Stubbs, in securing the movement of freight from eastern points to this port for trans-Pacific shipment, how was that handled over that desk; what was the routine?

A. We had solicitors on the street in San Francisco, we also had solicitors in various cities in the eastern part of the United States, the more important cities, Chicago, Pittsburg, New York and places like that who were constantly making the round of firms who were known to be shipping either domestic business or foreign business; those shippers were called on for the purpose of soliciting the routing of the business over the Southern Pa-

(Deposition of John Gray Stubbs.)

cific lines, and with respect to export business those solicitors in the course of that solicitation [54] would—I speak now of the eastern solicitors more particularly—wire out to our General Freight office in San Francisco to obtain space, that is, ocean space, the ocean rate for a given quantity of tonnage that might be offered to them; the men on the foreign desk, either directly themselves or through the solicitors on the street would make inquiries of various steamship companies, would ascertain from them if they could book these various shipments that were offered; if so for what clearance and at what rate; in other words the usual details; that information would be wired back to the commercial agent or solicitor in the east, and if the space and rate was accepted a confirmation would be sent to us and we would exchange or were supposed to exchange a confirmation with the steamship company for that space and at the rate quoted for that particular shipment. That was the ordinary detail and routine of handling it.

Q. When you say that we were supposed to send a confirmation, you mean the Southern Pacific Company, do you?     A. Yes.

Q. Now, the matter of securing this space from the steamer and confirming it to the eastern agent or to the shipper, as the case might be, was handled by the foreign desk, was it not?     A. Yes.

Q. The man on the foreign desk?

A. There were several of them on that desk.



(Deposition of John Gray Stubbs.)

Q. Without referring it in each instance to you for specific authority?

A. We considered that the ordinary routine business and as a rule those bookings, so called, did not come under my personal eye unless the man who was handling it should feel that there was something in connection with it that required my advice or my authority before he closed it up. [55]

Q. The usual and customary and routine method was for these things to be handled without your knowing about the individual item or case?

A. That is correct; yes.

Q. Now, the idea in making these bookings for ocean space for these shippers was to secure the movement of the freight over your line into San Francisco, was it not? A. Yes.

Q. Now, I will show you a document purporting to be a letter on the letter-head of the Southern Pacific Company, Pacific System and ask you if you recognize it or if you have seen it?

A. I cannot answer that question positively. I have some recollection of correspondence in the General Freight Office when I was in the Southern Pacific employ with reference to contract 607 and 608 on account of the Baldwin Shipping Company, but as to the precise details of those contracts I do not recollect, and while it is quite likely that in that correspondence I had occasion to and did see that particular letter, I cannot swear positively to the fact.

Q. I understand that. Now you, however, have

(Deposition of John Gray Stubbs.)

an independent recollection that there was a contract, 607, in the Southern Pacific office relating to the Baldwin Shipping Company?

A. Yes. That recollection if I may say comes about in this way, that in the congestion of export freight in the latter part of 1917 I had, so far as the Southern Pacific Company was concerned the task of clearing up that congestion, trying to get rid of it from the port, and I had made up a list of the export freight that he had on hand, who it belonged to and the details concerning it, and why it was not cleared; and I recall in that list contract 607 and 608 on account of the Baldwin Shipping Company. That is the reason those numbers [56] have stuck in my mind.

Q. Did you read that letter that I just showed you? A. Yes.

Q. After reading it do you recognize the signature?

A. It looks to me like Boyson's signature.

Q. Over your name? A. Over my name.

Q. Which was a customary routine method of handling these transactions?

A. These letters were always sent out over my name as General Freight Agent or over Mr. Luce's name as Freight Traffic Manager; the two names were used indiscriminately, and the clerk who dictated and signed the letter put his initials under the name of Stubbs or Luce as the case might be.

Q. That is apparently Boyson's?

A. I think those are Boyson's initials, and his

(Deposition of John Gray Stubbs.)

signature, according to my recollection.

Mr. GLENSOR.—I will ask the reporter to please mark this for identification, “Libelant’s Exhibit 1 for Identification.”

The letter is marked “Libelant’s Exhibit 1 for Identification.”

Q. Now, I will show you a carbon copy of a document purporting to be a letter and ask you if you have any recollection of ever having seen that?

A. I have no recollection of having see that letter.

Q. That letter, in fact, all letters received pertaining to contract 607 would be filed under contract 607, in the foreign department of the Southern Pacific General Freight office, would it not?

A. A letter like that when received would go directly to the foreign desk and they would attach it to their file of contract 607.

Q. Now, I will ask you to look at this document?

A. I cannot say positively that I have seen that letter before [57] but my recollection is that I have, that is the carbon copy of it in the files of the Southern Pacific Company.

Q. Will you look at the signature there and see if you can say what it is?

A. My recollection is that those are Boyson’s initials.

Q. And signed apparently in the same manner as 607? A. Yes.

Mr. GLENSOR.—I will ask that that be marked for identification “Libelant’s Exhibit 2.”

(Deposition of John Gray Stubbs.)

The letter is marked "Libelant's Exhibit 2 for Identification."

Q. Other than that have you any recollection of any of the facts relating to these contracts 607 and 608?

A. I have no recollection whatever as to the manner in which the bookings were negotiated in the first place by the foreign desk or as to the subsequent disposition of the freight itself.

Q. Now, was there a man by the name of Brown on the foreign desk?

A. Yes, Spencer Brown; initials S. W. Brown is my recollection; he was at one time the head of the foreign desk.

Q. Do you remember at what time he was?

A. I could not give you the date.

Q. I will ask you to kindly refer to a carbon copy of a letter marked "Contract 613" and ask you to read it.

A. I have seen that letter before, that is to say the filed copy of is in the Southern Pacific records.

Q. Do you know by whom it was written?

A. No.

Q. But you have seen a filed copy of it in the Southern Pacific records?

A. My recollection is that I have, yes.

Q. There is no doubt in your mind that it emanated from the [58] Southern Pacific office, is there?

A. Nothing to indicate to me but what it is a *bona fide* communication.

(Deposition of John Gray Stubbs.)

Q. I invite your attention to the fact that it is addressed to Messrs. C. R. Haley & Company. Do you know who Messrs. C. R. Haley & Company were?

A. Well, I don't know a great deal about them.

Q. Do you know what business they were engaged in?

A. Mr. C. R. Haley at that time I believe was handling shipments of refined oil from the east as an agent for some Eastern concern, that was a domestic business; and along with that he was what I would term a freight forwarder or broker in the export business; that is he secured space from steamship companies and in turn sold that space to people who wanted to take advantage of it.

Q. Now, at the time this letter bears date, June 28, 1917, you knew what business Mr. Haley was in, did you not?     A. At that time?

Q. Yes.     A. Yes.

Q. I also invite your attention to the notation on the bottom, C. C. Baldwin Shipping Company, 433 Sutter, and the check mark in blue pencil thereon, and I would ask you to please say from your knowledge of the routine methods of procedure in the Southern Pacific office what that indicates.

A. That would indicate that a carbon copy of the original letter to Haley & Company was to be sent to the Baldwin Shipping Company, and that blue-print mark would indicate that this particular car-

(Deposition of John Gray Stubbs.)

bon was the one for the mailing desk to send to the Baldwin Shipping Company.

Q. Mr. Stubbs, I invite your attention to the fact that contract 607, the first one you referred to, calls for the [59] clearance of 750 tons of tinplate a month for September, October, November and December, 1917. You said in your previous testimony that you were given the job of clearing up this stuff and getting it out. Of your own knowledge, as a matter of fact, do you know that these 750 tons of tinplate per month for those four months did not clear during the month for which they were booked?

A. My recollection is that they did not.

Q. Now, I invite your attention to the fact that contract 608 calls for the clearance of 2,000 tons of pig iron and steel articles in excessive sizes for Japan, late July, August and September clearance; it does not say clearance, but you understand that is what it meant by this, do you not? A. Yes.

Q. Have you an independent recollection or knowledge of the fact whether that 2,000 tons of pig-iron and steel articles in excessive sizes cleared during that time?

A. My recollection is that it did not.

Q. Now, I invite your attention to the fact that contract 613 relates to 2,500 tons of pig-iron and steel articles for August and December clearance for Kobe and Yokohama, \$15 weight or measurement, ship option; you would understand by that contract in the parlance of a freight traffic man,

(Deposition of John Gray Stubbs.)

that that means a clearance between August and December, would you not? A. Yes.

Q. Do you know whether that commodity cleared during the time specified, August and December, 1917?

A. I cannot say positively, but my recollection is that it did not.

Q. You recall as a matter of fact that all of the commodities mentioned in those three contracts cleared after the end of the year 1917, do you not?

A. That I cannot say. In the [60] first place I don't know how much was brought to San Francisco under these contracts and the details as to the ultimate clearance of such as was brought here, I have no recollection, precisely.

Q. In the course of the correspondence which you referred to and which took place in connection with the attempted clearance of this stuff or your efforts to clear it, you recall that the Baldwin Shipping Company notified you that they would be obliged to pay a much higher rate than these contracts called for in order to clear the stuff?

A. Mr. Glensor, I do not want to dodge, but—

Q. (Interrupting.) If you have no recollection you can say so. I understand.

A. I absolutely have no recollection of the details of these contracts or of the handling of the shipments that were made under them.

Mr. GLENSOR.—That is all.

Mr. FORD.—No questions. [61]

United States of America,  
State and Northern District of California,  
City and County of San Francisco,—ss.

I certify that, in pursuance of stipulation of counsel, on Wednesday, June 16, 1920, before me, Francis Krull, a United States Commissioner for the Northern District of California, at San Francisco, at the office of H. W. Glensor, Esq., in the Mills Building, in the City and County of San Francisco, State of California, personally appeared John Gray Stubbs, a witness called on behalf of the libelant in the cause entitled in the caption hereof; and H. W. Glensor, Esq., appeared as proctor for the libelant, and George Ford, Esq., appeared as proctor for the respondent, and the said witness having been by me first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth in said cause, deposed and said, as appears by his deposition hereto annexed.

I further certify that the deposition was then and there taken down in shorthand notes by E. W. Lehner, and thereafter reduced to typewriting; and I further certify that by stipulation of the proctors for the respective parties, the reading over of the deposition to the witness and the signing thereof were expressly waived.

And I do further certify that I have retained the said deposition in my possession for the purpose of delivering the same with my own hands to the clerk of the United States District Court for the Southern Division of the Northern District of



California, the court for which the same was taken.

And I do further certify that I am not of counsel, nor attorney for either of the parties in said deposition and caption [62] named, nor in any way interested in the event of the cause named in the said caption.

IN WITNESS WHEREOF, I have hereunto set my hand in my office aforesaid this 18th day of June, 1920.

[Seal] FRANCIS KRULL,  
United States Commissioner, Northern District of  
California, at San Francisco.

[Endorsed]: Filed Aug. 19, 1920. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [63]

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In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 16,755.

Before Hon. M. T. DOOLING, Judge.

BALDWIN SHIPPING COMPANY, INC., a  
Corporation,

Libelant,

vs.

SOUTHERN PACIFIC COMPANY, a Corpora-  
tion,

Respondent.

**(Testimony Taken in Open Court.)**

Thursday, August 19, 1920.

Counsel Appearing:

For the Libelant: H. W. GLENSOR, Esq.

For the Respondent: GEORGE FORD, Esq.

Mr. FORD.—We have here a slight amendment to our answer. Have you read that, Mr. Glensor?

Mr. GLENSOR.—Yes, I have read it.

Mr. FORD.—Any objection to it?

Mr. GLENSOR.—It seems to me that it is immaterial. I suppose if it is immaterial it can do no harm to file it.

The COURT.—Very well; that is my view of it.

Mr. GLENSOR.—I think this case should be disposed of very briefly. It is merely a question of liability; we are not prepared to fix damages; we expect to fix those before a commissioner if the libelee is held liable.

This is a libel by the Baldwin Shipping Company, an Illinois Corporation, against the Southern Pacific Company, a Corporation. [64] Mr. Ford, will you admit that the Baldwin Shipping Company is an Illinois corporation?

Mr. FORD.—Yes.

Mr. GLENSOR.—The testimony of libelant has been taken in depositions, largely, which depositions are here on file, and I will offer them in evidence, and with your Honor's permission I will comment briefly on them.

The COURT.—Is there any further testimony to be offered?

Mr. GLENSOR.—On behalf of libelant, I think not.

Mr. FORD.—Before going into that matter, let us see what we can stipulate to as to the defense.

Mr. GLENSOR.—Yes.

Mr. FORD.—These are matters that we will be prepared to prove unless stipulated to. The libel simply alleges that the Southern Pacific Company is a corporation. We desire to have an admission that it is a corporation engaged in interstate commerce, carrying freight and passengers within the United States.

Mr. GLENSOR.—It will be so admitted.

Mr. FORD.—And it will also be admitted, I understand—by the way, there are three counts in this libel, one for the shipment of 2,000 tons of pig iron and steel articles from San Francisco to some port in Japan or China, another of 2,500 tons of pig iron and steel articles between the same points, and another of 750 tons of tinplate.

The COURT.—They all involve the same question, do they?

Mr. FORD.—Yes, and the shipments were all to be made during the latter part of 1917. I understand that it will be admitted that the plaintiff, Baldwin Shipping Company, requested the Southern Pacific Company to engage this space for it; that it will [65] be admitted also that the Southern Pacific Company did engage this space from C. B. Haley & Company, who at that time were engaged in business here in San Francisco in forwarding freight, and that C. B. Haley & Company

agreed to take this amount of freight between these points at the time stated, and at a certain rate which was agreed upon.

The COURT.—I would understand it much better if I knew what was involved in the case.

Mr. GLENSOR.—I think if you will withhold that request for a moment, I will go a little further with my statement. The depositions which I am about to place before your Honor, I will refer to briefly with your Honor's permission. One is the deposition of John Gray Stubbs, who is the freight—

The COURT.—What are the facts in issue?

Mr. GLENSOR.—The facts in issue are these, that the Southern Pacific agreed to carry certain freight under these contracts during the time covered by the contract. The counts in the libel are based on three bookings, what steamship men call firm bookings for freight from San Francisco to various points in the Orient. One of them is dated June 22, 1917, and is in the form of a letter from the Southern Pacific Company to the Baldwin Shipping Company, reading as follows:

“Referring to our phone conversation, we have booked for your account 750 tons of tinsplate a month for September, October, November and December, to Shanghai at \$16 per ton, weight and measurement, ship's option.

“This will be covered by Southern Pacific Contract No. 607.

“Kindly confirm in writing.

“Yours truly,

“J. G. STUBBS.”

The deposition shows that J. G. Stubbs was the general freight agent for the libelee in San Francisco at that time. [66] To which the Baldwin Shipping Company replied as follows, under date of June 26th, four days later:

“This will acknowledge receipt of your letter of June 22nd, file 1—E—Contract No. 607, booking for the account of the Baldwin Shipping Company, 750 tons tinplate per month, September, October, November and December, 1917, at ocean rate of \$16 per ton, weight or measurement, ship’s option—destined Shanghai and covered by your contract No. 607.

“You have advised us that at the present time you cannot inform us the name of line with which you have booked this 3000 tons of tinplate, but guarantee to clear on first-class steamers carrying lowest rate of insurance, and to protect the above rate—this is agreeable to us, however, at the earliest possible date let us know with whom you have booked this business, so that we can give instructions to our New York office, relative issuance of the bills of lading.

“We will keep you advised of the forwarding of this business from the mills, and, if we can assist you in any way, do not fail to let us know.”

The next contract is No. 608, and is the same date, June 22, 1917, and reads as follows:

“Baldwin Shipping Company”—

Mr. FORD.—Just the same as the other except that it covers 2,000 tons of pig iron and steel articles.

The COURT.—It is understood all the counts are the same, as far as questions of law are concerned, whatever applies to one applies to the other.

Mr. GLENSOR.—That was acknowledged by a letter identically in form and language—

The COURT.—There is the same question involved in all three [67] cases, and if you confine yourself to one it will be better.

Mr. GLENSOR.—It was testified to and appears in the depositions that the name of the line with whom these bookings were made was requested by the Baldwin Shipping Company from the Southern Pacific Company and they declined to give it. That appears specifically with reference to one contract, and it will be admitted with regard to the other two, Mr. Ford?

Mr. FORD.—No; we will claim that the Baldwin Shipping Company knew from the start where the goods were to be shipped.

The COURT.—Over what line?

Mr. FORD.—Yes. Your Honor, during this period the evidence will show—

The COURT.—What is the object of this suit, that is what I would like to know before I go further.

Mr. GLENSOR.—The object is this: The commodities did not clear under these bookings, the Southern Pacific did not protect the ocean space, and the Baldwin Shipping Company was obliged to ship by other lines at higher freight rates, and this action is to recover damages.

The COURT.—I understand.

Mr. GLENSOR.—If that is not admitted, I will have to—

Mr. FORD.—If what is not admitted?

Mr. GLENSOR.—That the railroad company did not advise the Baldwin Shipping Company, with whom they booked this freight.

Mr. FORD.—Mr. Glensor, you will find that the railroad company has sent your company a copy of the letter addressed to C. R. Haley & Company.

Mr. GLENSOR.—In one case.

Mr. FORD.—I cannot admit that they did not notify them, because we will prove that they did know. [68]

The COURT.—Is it your defense that you complied with the contract?

Mr. FORD.—Our defense is we did not agree to ship this at all, we simply acted as the representative of the Baldwin Shipping Company in engaging the space; that under the law we could not agree to ship. Now, the complaint here is based upon the proposition that we agreed to make these shipments between San Francisco and these ports.

The COURT.—Your claim is there was no contract, and, secondly, if there was a contract, it was void.

Mr. FORD.—Yes, I presume it will be admitted as to each of these matters that we did engage space from C. R. Haley & Co., and C. R. Haley & Co. confirmed our engagements of space, but as I understand it, Mr. Glensor claims that was not a compliance with our agreement with the Baldwin Shipping Company.

Mr. GLENSOR.—That is it; in other words, that this agreement of theirs which I have just read to the Court, was not an agreement merely to engage space, which could be fulfilled by their engaging space, but was to protect the movement of this stuff. These bookings have been sustained by courts of admiralty on innumerable occasions, and if the commodity was not delivered to the ship the shipper has been compelled to pay freight on it.

The COURT.—To what extent do you differ over the facts? Only to the extent that you claim that they did not notify you?

Mr. GLENSOR.—We claim that they did not notify us with whom they had booked this freight, and, therefore, they cannot be now allowed to say that they booked it as our agent.

The COURT.—Is that the only disputed question of fact?

Mr. GLENSOR.—Yes.

The COURT.—Proceed with the testimony on that point, then. [69]

Mr. FORD.—I have not quite finished with the stipulations we want. The stipulation that I want is that the Southern Pacific Company was engaged in interstate commerce during the period in question, and I desire to further stipulate that the Southern Pacific Company had not, during any of those times, filed with the Interstate Commerce Commission any schedule of rates between San Francisco and these ports in China and Japan, or between any Pacific Coast ports and these ports in Japan and China, and it was not at that time oper-



ating any steamship line between those ports. Those are the facts and can be proved, but I understand that they will be stipulated to.

Mr. GLENSOR.—I cannot admit that they were not operating these steamship lines, although I do not know that they were; but the Southern Pacific Company does operate steamships on the other coast, and other railroads have, under these conditions, chartered steamers from them to protect these contracts. I am willing to admit that they had not filed any tariff with the Interstate Commerce Commission; I will admit that for what it is worth, but it seems it is wholly immaterial.

The COURT.—Get all the facts; that is all I care for now.

**Testimony of Glenna De Witt Green, for Libelant.**

GLENN A DE WITT GREEN, called for libelant, sworn.

Mr. GLENSOR.—Q. You have given your deposition already in this matter, touching some phases of it? A. Yes.

Q. You were the secretary to the general manager of the Baldwin Shipping Company, in San Francisco, were you not? A. Yes.

Q. And you actually handled the transactions surrounding the making of the three bookings covered by the Southern Pacific contracts 607, 608 and 613, did you not? A. Yes, I did. [70]

Q. You wrote the letters confirming those contracts, did you not? A. I did.

Q. I call your attention to the language in each

(Testimony of Glenna De Witt Green.)

of the letters acknowledging the contract, "You have advised us that at the present time you cannot inform us of the name of line with which you have booked this 3,000 tons of tinplate," or whatever was covered by the contract in question, and I would ask you if the Southern Pacific Company at any time advised you, or if you had knowledge of the line with which the Southern Pacific Company had booked the freight in question?

A. No, I did not.

Q. Did you ever request this information from the Southern Pacific Company?

A. I did. I asked them with what line they had booked the freight, and the gentleman who did the talking informed me that he did not know at that time that it was a steamer carrying the lowest rate of ocean insurance, and No. A-1.

Q. Over what period of time did you make requests for this information?

A. During all the time I booked freight—every time I booked any freight with the Southern Pacific Company I asked them for that information.

Q. I call your attention to the fact that one of these contracts, or one of the letters which is written by the Southern Pacific Company to C. R. Haley, a carbon copy of which was sent to you—that was the contract which in your deposition you testified you made verbally with Mr. Brown, and was confirmed in the manner I have just indicated—contract 613. I note in that that you make the same request, that they advise you of the name of the

(Testimony of Glenna De Witt Green.)

steamer line on which they have booked those 2,500 tons, so that you could instruct the New York office with regard to the issuance of bills of lading. Did you know what C. R. Haley's business was, or anything about it?

A. I knew C. R. Haley was in [71] business here, but I knew nothing about him.

Q. You still in that letter wanted to know the name of the line or the steamer on which this freight was to move, did you not? A. Certainly.

Mr. GLENSOR.—That is all.

Cross-examination.

Mr. FORD.—I call your attention to the fact that these books were made all in the latter part of June, June 22 and June 28, those three contracts; do you recall that?

A. They were all very close together.

Q. The fact is, according to your letter, they were on June 22, and June 28, two of them made on June 22d and one on June 28th, and as to one of the bookings, a copy of the letter which was sent by the Southern Pacific Company to C. R. Haley was enclosed to you; you recall that, do you not?

A. You mean the last booking?

Q. The last one, of the 28th, yes. A. Yes.

Q. Did you have any conversation with Mr. C. R. Haley following that time? A. No, not at all.

Q. Did Mr. C. R. Haley not call at your office and call you on the telephone on several occasions to find out from you when these goods would be here that were to be shipped during August?

(Testimony of Glenna De Witt Green.)

A. Absolutely not.

Q. He did not? A. No.

Q. You cannot state whether any of these goods were received for that August shipment, or not?

A. I know we notified the Southern Pacific when it was received.

Q. You could not tell when it was they arrived?

A. No.

Q. So whether any of them, arrived, for, Mr. Haley's August shipment, you don't know?

A. I could not tell you now, I would [72] have to look at the date of the arrival.

Q. You know Mr. Haley?

A. I have seen him twice.

Q. Where? A. On the street once.

Q. Never saw him in your office? A. No.

Q. Did you ever talk to him over the telephone?

A. Not on anything connected with this.

Q. I say, did you ever talk to him over the telephone? A. I do not believe I ever did.

Q. You mentioned that one of these arrangements was made by Mr. Brown, of the Southern Pacific Company. A. Yes.

Q. Where was that—over the telephone, or at your office?

A. Over the telephone, and in the office, too.

Q. Do you know Mr. Brown?

A. I saw Mr. Brown once, that is all.

Q. That was the name, Mr. Brown?

A. That was his name.

Q. Do you recognize Mr. Brown? (Will you

(Testimony of Glenna De Witt Green.)

stand up for a moment, Mr. Brown?)

A. I don't know. It has been a long time ago. I was under the impression Mr. Brown was a large short man.

Q. Do you recognize Mr. Boyson? A. No.

Q. You don't recognize him? A. No.

Q. How do you place the name Brown, then?

A. Because I remember Mr. Brown very distinctly.

Q. This letter that was sent to you showing the Southern Pacific engaged this space through C. R. Haley & Co., did that mean anything to you at all?

A. It did not to me, because our manager was in the east, and it was left to me. I was simply booking freight on instructions. That was a matter for him.

Q. You say you were anxious to find out what steamer this was going on.

A. That was because our New York office was calling for that information.

Q. Did you request Mr. Haley to tell you what steamer or when [73] it would sail?

A. No. I had no dealings with Mr. Haley. I had my dealings with the Southern Pacific.

Q. But you say you did request the Southern Pacific? A. Yes, I did.

Q. How, by letter?

A. Over the phone, and by letter also, as these letters indicate there.

Q. In these letters of June 22d, at the time you engaged the space, you see, there, you have not been

(Testimony of Glenna De Witt Green.)

given the name of the steamer, but you recall from the correspondence that a reply was given you in which a copy of the letter from the Southern Pacific Company to Mr. Haley was enclosed to you. Now, then, after that, after the receipt of that letter of June 22d, or June 28th, whatever it may be, did you write the Southern Pacific Company, or call it up and say this letter does not indicate what steamer Mr. Haley is going to send these goods out on?

A. I did not; I had nothing to do with that.

Q. Did you know what business C. R. Haley & Company were engaged in at that time?

A. I knew nothing of C. R. Haley at the time I booked this freight.

Q. When the letter was received by you from the Southern Pacific, addressed to C. R. Haley & Co., was there anything then that indicated to you that they were engaged in the freight forwarding business between here and the Orient?

A. I had heard rumors—I had never heard of anything of C. R. Haley other than that Mr. Haley was a broker.

Q. And engaged in what line of brokerage?

A. I did not know. He handled many lines, I understood.

Q. Many steamship lines, or many what?

A. No, he handled oils and many things in that line.

Q. Was not that a later date that he went into the oil business?

(Testimony of Glenna De Witt Green.)

A. I don't know. It was my impression that Mr. Haley booked most anything he could book. [74]

Q. Your company had done business with Mr. Haley before, had it not? A. No.

Q. After that, did you do any business with Mr. Haley? A. I believe they did later on.

Q. That is, your Mr. Simmons transacted shipping business with Mr. Haley direct?

A. No, through the Southern Pacific.

Q. Not any business directly with him, so far as you know? A. Not so far as I know.

Q. Do you recall some freight that was to be sent out on the "Zealandia" by your company through Mr. Haley? A. No, I do not.

Q. Do you recall Mr. Haley talking with you about that, and wanting to get the time when your freight would arrive? A. No.

Q. And telling you unless he was able to fulfill the contract with the "Zealandia" that contract would be cancelled? A. No.

Q. Was there another lady in your office during that period? A. Yes, I had a stenographer there.

Q. Did she transact that class of business, or did you do that alone?

A. I handled it when Mr. Simmons was not there. They came in when I was out of the office, because I was on the street a great part of the time myself.

Q. In June, 1917, was Mr. Simmons, who was your superior in the Baldwin Shipping Company, there or out of town? A. He was out of town.

(Testimony of Glenna De Witt Green.)

Q. Do you remember what period he was out?

A. During the period I booked this freight.

Q. Was he in the office, say in August or July, when some of this freight was to come out?

A. Yes, Mr. Simmons just made short trips out of the city, either to New York or to Seattle; he was never gone for any great length of time.

Q. Did you know whether any request was made of Mr. Simmons as [75] to when these cars of freight would be ready to go out on the "Zealandia," or any of these other boats?

A. No, I do not recall the "Zealandia" at all.

Q. Mrs. Green, the fact of the matter is that you were handling these matters simply because of Mr. Simmons' absence?

A. I have handled them when he was there, too.

Q. You were handling them when he was there, too?     A. Yes.

Q. But who, for instance, would a matter of that kind be taken up with, as to whether certain freight would be on hand to go out on a certain boat, with you or Mr. Simmons, or either of you?

A. With either one of us.

Q. You say it was not taken up with yourself. You don't know whether it was with Mr. Simmons, or not?     A. No. I do not.

#### Redirect Examination.

Mr. GLENSOR.—Q. Mrs. Green, as to this letter, a carbon copy—

Mr. FORD.—We will stipulate that the copies



may be used instead of the originals. I have the originals, but it will take time to get them.

Mr. GLENSOR.—I will offer these letters in evidence. I will read them. This letter dated “San Francisco, California, December 27, 1917, Southern Pacific Co., San Francisco. Gentlemen”—

The COURT.—Is that all with the witness?

Mr. GLENSOR.—That is all. I may want to ask a question or two after I read these letters.

“Attention Mr. J. G. Stubbs, G. F. A. Your file No. 1-E, Contract #607.

“We beg to refer you to your letter of June 22nd, 1917, wherein you confirmed your earlier telephonic advice that you had booked for movement to Shanghai 750 tons of tinplate per [76] month for September, October, November and December. This booking was made by you to complete through shipments to be initiated by you on our account of tinplate from certain points of origin to Shanghai.

“Your files will disclose that numerous shipments originating at Eastern points have been undertaken by you and that we have from time to time advised you thereof. We have not yet been advised by you that any of this tinplate has been cleared from this coast and desire to have you hear us fully on the subject by return mail.

“We shall be very glad to do everything in our power to aid you in moving this freight. Please give the matter your immediate attention and let

us have your acknowledgment of the receipt of this communication.

“Yours very truly,  
“BALDWIN SHIPPING COMPANY,  
“By J. H. SIMMONS,  
“Vice-President.”

A letter on the letter-head of the Southern Pacific Company addressed to C. R. Haley & Company, 149 California Street, San Francisco, Calif., carbon copy to Baldwin Shipping Co., referring to a letter of the Baldwin Shipping Company dated October 12, S. F. tinplate.

“Gentlemen: Under above mentioned contract you booked 760 tons of tinplate per month, September, October, November and December clearance to Shanghai at ocean rate of \$16.00 per 2,000 lbs.

“Wish to advise Union Pacific Export bill of lading 2034 covering approximately 350 tons to apply on this booking, and the Baldwin Shipping Company are holding export license which expires Nov. 22nd. Will you kindly look into this immediately, advising [77] me by return mail on what steamer this tinplate will clear in order that I may arrange to secure the necessary papers for clearance.

“Yours truly,  
“(Sgd.) J. G. STUBBS.

“RWD.”

A letter to J. G. Stubbs, Agent, Southern Pacific

Company, San Francisco, Calif., dated San Francisco, November 2, 1917:

“I respectfully refer you to your letter of June 22, your File 1-E, contract 608, in which you state you have booked firm for the account of the Baldwin Shipping Co. 2,000 tons pig iron and steel articles, in excessive sizes, Japan, late July, August, and September clearance at an ocean rate of \$15.00 per ton, weight or measurement, ship’s option.

“I beg to call your attention to the fact that most of this tonnage is on hand San Francisco, in fact has been here for two or three months, and notwithstanding our repeated request on your office, and also Mr. Hardy’s office as to prospective clearances, we have received absolutely no information whatever.

“Our clients have been pressing us on this business and they inform us that we must give them some definite satisfaction immediately, as they are tired of our repeated promises,—and, at the present time we must insist on the clearance of this business without delay.

“Kindly investigate this matter, and advise what reply we shall make to the shippers. In further connection with this booking beg to advise that the balance of the freight covered by this contract is now en route, and shippers are calling on our New York office for export bills lading, and will thank you to see that the necessary authority is trans-

mitted to your New York office for issuance of these documents.

“Yours truly,

“(Sgd.) BALDWIN SHIPPING CO.

“J. H. S.” [78]

Q. That was J. H. Simmons, manager of the Baldwin Shipping Company, was it not, “J. H. S.”? A. Yes.

Mr. GLENSOR.—I assume it will be admitted that Mr. Hardie was the local agent for the Southern Pacific in San Francisco?

Mr. FORD.—Yes.

Mr. GLENSOR.—A letter from the Baldwin Shipping Company to Mr. J. G. Stubbs, G. F. A., Southern Pacific Company, San Francisco, Calif., dated San Francisco, July 19, 1917:

“Dear Sir: Referring to your letter of June 28th, your file 1-3-Contract 613, covering approximately 2500 tons of pig iron and steel articles which you have booked for August to December clearance, Kobe-Yokohama, at ocean rate of \$15.00.

“Kindly let us have the name of the steamship line via which these shipments are booked, so that we can advise the shippers.

“Yours truly,

“BALDWIN SHIPPING CO.,

“Vice-Pres.”

I offer these communications in evidence and ask that they be marked “Libelant’s Exhibit 1.”

(The letters are marked “Libelant’s Exhibit 1.”)

Of course, we make no pretense that we are here

(Testimony of Glenna De Witt Green.)

this morning prepared to show how much arrived and did not clear; we are here this morning on the question of liability.

The COURT.—I understand.

Mr. GLENSOR.—That would be quite a burdensome proceeding, it would require a lot of records. That is all for the present, Miss Green.

Recross-examination.

Mr. FORD.—Q. You say Mr. J. H. Simmons was your vice-president and general manager during that period. A. He was. [79]

Q. Mrs. Green, is it not a fact that you, yourself, know of your own knowledge that during these early shipments, the ones that would go out on the first boats, that Mr. Simmons got a lower rate elsewhere, say, for instance, he was to ship at \$16, he got a rate for \$12, and shipped other goods on other boats, and he got into trouble with your company by reason of appropriating money to his own use?

A. Not at this time. I don't know of anything like that at that time.

Q. Is it not a fact that Mr. Simmons, by reason of appropriating moneys from your company, is now a fugitive from justice?

A. Well, I don't know of anything he did.

Q. Is it not a fact, with reference to some of these very shipments that Mr. Simmons made these contracts, or had these contracts made where he could get a rate to China or Japan, and he would take the same freight, when it arrived here, and

(Testimony of Glenna De Witt Green.)

farm it out to some other boats, from which he could get a lower rate for the time being, and failed to fulfill these contracts?   A. No.

Q. Didn't you know of your own knowledge that as to the first part of these shipments by C. R. Haley & Co. that Mr. Simmons failed to fill, and that Mr. Haley lost his contract with the "Zealandia"?

A. I don't know anything about the steamer "Zealandia"; I never knew it.

A. Maybe you did not know. Didn't you know, though, that Mr. Simmons was doing that very thing, and that is the thing that got him in trouble?

A. No, not at this time.

Q. When was he doing it?   A. Later, in 1918.

Q. You did not learn anything of this kind back in 1917?   A. No.

Q. Did you learn in 1918 he was doing what I have related?

A. I have learned that he did irregular things regarding the [80] business of the Baldwin Shipping Company.

Mr. GLENSOR.—He is not a fugitive from justice.

Mr. FORD.—I had the information first from you people that he embezzled a lot of money from you people.

Mr. GLENSOR.—But he is not a fugitive from justice.

Mr. FORD.—I simply wanted to show what the fact was. That is all.

(Testimony of Glenna De Witt Green.)

Mr. GLENSOR.—Libelant rests. We offer, of course, in evidence these depositions.

Mr. FORD.—As I understand it, Mr. Glensor, you stipulate that the Southern Pacific Company did not have on file with the Interstate Commerce Commission any schedule of rates between the points indicated?

Mr. GLENSOR.—I will stipulate to that.

Mr. FORD.—Do you want me to prove that the company did not own or operate any boats between those points?

Mr. GLENSOR.—You can try to prove it. I am going to object to it.

Mr. FORD.—I do not think it is material, myself.

The COURT.—You will have to determine that for yourself.

**Testimony of Percy P. Dougherty, for Defendant.**

PERCY P. DOUGHERTY, called for the defendant, sworn.

Mr. FORD.—Q. You are, and have been for some time past, an employee of the Southern Pacific Company? A. Yes.

Q. And of the United States Railroad Administration during the time it was in charge?

A. Yes.

Q. Were you in the employ of the Southern Pacific Company during the year 1917?

A. I entered the service of the Southern Pacific Company December 11, 1916. [81]

Q. Now, during the period in question, have you

(Testimony of Percy P. Dougherty.)

been acquainted with the schedule or the tariffs on file with the Interstate Commerce Commission?

A. I was quoting freight rates for two years.

Q. Then you were, during all that time, acquainted with them, were you?

A. I am and were.

Q. Will you state to the Court whether or not during any of those times the Southern Pacific Company had on file with the Interstate Commerce Commission any schedule or tariff of rates between San Francisco or any Pacific Coast Port and China or Japan?

Mr. GLENSOR.—To which we reserve an objection that it is immaterial.

The COURT.—I will reserve my ruling on it. I think it is immaterial, myself, but you may proceed.

A. They did not.

Mr. FORD.—Q. Will you state to the Court whether or not during that period the Southern Pacific was operating any boats between the points in question.

Mr. GLENSOR.—The same objection.

The COURT.—I will reserve my ruling; you may answer.

Q. They were not, to my knowledge.

Mr. FORD.—Q. Did they own any boats that they were operating between those points?

A. No, not to my knowledge.

Q. During any of the time since you have been with them from 1916 up to the present, did they



(Testimony of Percy P. Dougherty.)

have any schedule of rates between those points?

A. No, never.

Cross-examination.

Mr. GLENSOR.—Q. Don't you know as a fact that some of the other carriers actually chartered steamers? A. I do not; no.

Q. You do not know? A. No. [82]

Q. For the purpose of protecting some of these bookings?

A. I could not say, for at that time I was not directly connected with the import and export work and it would not come to my knowledge.

**Testimony of S. W. Brown, for Respondent.**

S. W. BROWN, called for the respondent, sworn.

Mr. FORD.—Q. Mr. Brown, what is your business or occupation at the present time?

A. In the import and export business.

Q. With what concern?

A. Purchasing agent of the China, Japan & South America Trading Company.

Q. Formerly, were you in the employ of the Southern Pacific Company? A. I was.

Q. During what period, about?

A. From 1907 to sometime in 1917.

Q. You left the service of the company prior to the time the United States Railroad Administration took charge, then? A. I did.

Q. You were in the employ of the Southern Pacific Company during June, 1917? A. I was.

(Testimony of S. W. Brown.)

Q. And for a later period than that?

A. I was.

Q. Now, were you acquainted at the time in question, that is, around just prior to June and following June, 1917, with the conditions surrounding the securing of space for exporting goods from San Francisco to China and Japan? A. I was.

Q. Briefly, what was the situation?

A. Space was very hard to secure, not only by shippers, themselves, but by the railroads. The shippers, in a great many cases, would go to the railroads and ask them to secure space, when they, themselves, were unable to do so. It was, of course, the policy of the Southern Pacific to book such space direct with the steamers, if possible, but conditions at that time were such that it was impossible to [83] secure space, particularly for large tonnage, and it would be necessary to book that space through brokers.

Q. How, if you know, was it that space could be had through brokers while not directly with the companies?

A. Well, I don't know positively; my understanding was that they had foreseen congestion and had booked up large amounts of tonnage.

Q. Did you know the firm of C. R. Haley & Company? A. I did.

Q. What business was it engaged in?

A. In the freight brokerage business.

Q. Was it or not at that time quoting rates for shipments from San Francisco to China and

(Testimony of S. W. Brown.)

Japan? A. They were booking space.

Q. Do you know these three contracts that are referred to here—we refer to them as File Contract No. 607, 608 and 613. A. Not personally; no.

Q. You were in the department, were you?

A. I would prefer not to answer that question, without looking up my records.

Q. These were not matters that you, yourself, directly had to do with? A. No.

Mr. FORD.—The letters are already in evidence where the company advised you that they had engaged space, that is, all three contracts?

Mr. GLENSOR.—Yes, book space.

Mr. FORD.—As to that contract and copy of letter written by the Southern Pacific to C. R. Haley, that is in evidence?

Mr. GLENSOR.—Yes.

Mr. FORD.—You won't question the genuineness of this?

Mr. GLENSOR.—Not at all.

Mr. FORD.—We offer in evidence, then, your Honor, and we will offer it with reference to 613, a copy of this letter—it is already in evidence—offered by the Baldwin Shipping [84] Company, having been sent by the Southern Pacific Company, addressed by the Southern Pacific Company to C. R. Haley & Co., booking 2,500 tons of pig iron and steel articles at \$15 a ton, and underneath a letter, the part we want to appear in evidence particularly is the signature of C. R. Haley & Co., O.K.'-ing the booking as agreed upon.

(Testimony of S. W. Brown.)

Now, with reference to 607, the same procedure, exactly, the same form of letter is written by the Southern Pacific Company to C. R. Haley & Company, confirming telephone conversation, and then stating what the tonnage to be shipped was, the rate, and asking that the matter be confirmed, the same as in the other instance.

Mr. GLENSOR.—Contract 607, you are talking about?

Mr. FORD.—Yes, and we have the confirmation of that contract. Now, 608 is for 2,000 tons, and I do not seem to have that file with me, although I have correspondence which shows the same procedure.

Mr. GLENSOR.—I have no objection to admitting that the Southern Pacific Company actually booked this stuff with C. R. Haley, that is, they made a subcontract, made a contract on their own account with C. R. Haley.

Mr. FORD.—Q. Now, Mr. Brown, do you know whether or not, at the period in question, space for the tonnage indicated in June, 1917, could have been had at these rates elsewhere?

The COURT.—That would go to the amount of damages, would it not?

Mr. FORD.—What I was aiming to show was that these brokers had contracts for the space and that it could not be had except through them.

The COURT.—Would this witness know those facts?

Mr. FORD.—He was engaged in that business,

(Testimony of S. W. Brown.)

and soliciting freight space from others. [85]

A. Not in as large blocks as that required by the Baldwin Shipping Company.

Q. You don't know personally whether attempts were made to get space elsewhere in this particular instance? A. I could not say.

Cross-examination.

Mr. GLENSOR.—Q. The space situation in San Francisco was speculative—ocean space was, was it not? A. To a certain extent.

Q. The money which was being made and lost by the men on the street—I am speaking of the street in the shipping sense—was in ocean space, was it not?

A. I could not answer that from the Southern Pacific standpoint; they did not speculate.

Mr. FORD.—There was one matter I overlooked.

Q. What has been the practice prior to June, 1917, and following that time, so far as the Southern Pacific Company was concerned, with reference to engaging space for shippers?

Mr. GLENSOR.—That is objectionable.

The COURT.—I do not see the point of it if there is a written contract here. He may answer if he desires to put the evidence in the record.

A. The Southern Pacific would book space directly with the steamship company if possible, and if not they would help their clients by booking it with brokers, but it was generally understood that

(Testimony of S. W. Brown.)

space was to be secured through whatever source was possible.

Q. Was this a frequent occurrence, that you would engage the space or book the space for your clients? A. It was.

Mr. GLENSOR.—Q. The idea back of the booking of this space was to get this stuff to move over your railroad to San Francisco, was it not?

Q. Generally speaking, yes.

Q. And you delivered it right to the steamship under these bookings and put it aboard the steamer, that is, you delivered it to the [86] docks, didn't you?

A. That was handled by the local officers, with which I was not familiar.

Q. You know as a fact, don't you, without knowing the details of how it was done, that the Southern Pacific cleared this freight under these bookings to the steamer?

A. Unless the shipper took it out of the hands of the Southern Pacific by arbitrarily diverting it to other steamer lines.

Q. Unless he did that, the Southern Pacific cleared under the bookings under which it arrived here? A. Yes.

Mr. FORD.—I presume it will be stipulated that this freight was booked directly from the points of origin to Yokohama, or wherever it was sent?

Mr. GLENSOR.—I don't know that to be a fact.

Mr. FORD.—We have here numerous shipments

(Testimony of S. W. Brown.)

that were made and they show from Ohio to Kobe, right on the face of the bill of lading where the shipment was made to. I have hundreds of them in here the same way, and I find no exception to the bills of lading being for through shipment.

Mr. GLENSOR.—I will tell you why. It goes into a question both of law and fact. These bills of lading that you have here are known as through export bill of lading, but the shipments travel on what is known as an inward bill of lading from the point of origin to San Francisco, and then an ocean bill of lading is issued thereon and the shipments traveled on the steamer on the ocean bill of lading, but this export bill of lading accompanies it all the time. The issuance of that export bill of lading back in New York and Philadelphia does not mean that the carrier is undertaking to transport it clear through.

Mr. FORD.—It simply went to the question you asked Mr. Brown about their delivery; for instance, if there was nobody here at all [87] representing the Baldwin Shipping Company, and this was billed through to Yokohama, why, the Southern Pacific Company would deliver it to them directly.

Mr. GLENSOR.—The issuance of that bill of lading does not bind us.

Mr. FORD.—All right.

**Testimony of L. F. Boyson, for Respondent.**

L. F. BOYSON, called for the respondent, sworn.

Mr. FORD.—Q. Mr. Boyson, you were in 1917 employed by the Southern Pacific Company?

A. I was.

Q. Were you there at the time the United States Railroad Administration took charge, the latter part of 1917? A. No.

Q. You left the employment before that?

A. Yes. However, I was employed by the Southern Pacific Company from January 1, 1919, to the latter part of 1919.

Q. That is, you had come back in the employ during the United States Railroad Administration? A. Yes.

Q. You were in its employ in June, 1917, and for a time thereafter, at the time of one of these transactions with the Baldwin Shipping Company?

A. I can't recall exactly the date I left, but I think I left there on June 1, or some time around there.

Q. Referring now to contract or file 613, wherein advice is given to the Baldwin Shipping Company that certain space has been engaged for June—

A. I was there I think until July 1st.

Q. You were there, then, in June, 1917?

A. Yes.

Q. You handled some of these transactions?

A. Yes.

Q. Did you come in contact with Mrs. Green?



(Testimony of L. F. Boyson.)

A. Not personally.

Q. Did you talk with her, if you know, about making these bookings?

A. I talked with the lady of the Baldwin Shipping Company's office. [88]

Q. You did not go to the office, though, to see her? A. No.

Q. Was it over the telephone?

A. Over the telephone.

Q. Then you followed up this conversation by engaging this space and writing that you had done so? A. Yes.

Q. At that time, was there any belief you could get space at the rates indicated other than through sources like C. R. Haley Co.?

A. No. At the time I was on this particular desk, it was the custom to call up all these steamship lines, and the particular reason this freight was booked through C. R. Haley was because it was the cheapest rate.

Q. Do you know how it was that these brokers, such as C. R. Haley and others in the business were able to quote a less rate than you could get?

A. I did not at that time.

Q. Did you know what steamers at the time in June, when you engaged this space, it was to be shipped on?

Mr. GLENSOR.—I object to that as immaterial.

A. I had no information on that point.

Mr. FORD.—Q. Was it possible for you to get the information?

(Testimony of L. F. Boyson.)

A. On repeated requests on Mr. Haley, he failed to give it to me.

Q. Did you then give the Baldwin Shipping Company all the information you had on the subject? A. I did.

Q. Were these transactions all handled in about the same way? A. About the same manner.

Q. As I understand you, you would call up the various steamship lines and get rates? A. Yes.

Q. And quote your clients the lowest rate?

A. Yes.

Q. Were you able to get any better rates than as indicated in this particular letter, I think it was \$16 a ton? A. No.

#### Cross-examination.

Mr. GLENSOR.—Q. Mr. Boyson, have you an independent recollection [89] of these three contracts, 608, 6L7 and 613?

A. I happened to review the files a couple of years ago, and it is my recollection that I only booked one of these particular contracts.

Q. Which one of them?

A. I could not say, without referring to the files.

Mr. FORD.—Show him 613.

Mr. GLENSOR.—I think book 2; I am not sure. I will show you 607 and 608.

Q. Who was J. N. H.?

A. A party by the name of Mr. J. N. Harper.

Q. Are these two contracts booked by you?

A. Yes, that is my writing.

(Testimony of L. F. Boyson.)

Q. Now, I call your attention to the fact that the one here booked by J. N. Harper was booked in the form of a letter to C. R. Haley & Co., with a carbon copy to the Baldwin Shipping Co.?

A. Yes.

Q. While the two that were booked by you were booked by letter direct to the Baldwin Shipping Co.?

A. Yes.

Q. You see that?

A. Yes.

Q. Now, are you still willing and ready to swear that you notified the Baldwin Shipping Company that you booked these contracts with C. R. Haley & Co.?

A. According to these two contracts that I made there I did not notify them that I made the contracts with C. R. Haley.

Q. The third contract was actually made by Mr. Harper?

A. Yes.

#### Redirect Examination.

Mr. FORD.—Q. Mr. Byson, what, if any, contract, agreement or understanding did you have with the Baldwin Shipping Company other than is contained in the letters in evidence here, where you say, “Referring to our former conversation, we have booked for your account 750 tons of tinplate a month for September, October, November and December to Shanghai at \$16 per ton weight [90] or measurement, ship’s option. This will be covered by Southern Pacific Contract 607. Kindly confirm in writing.”

(Testimony of R. Roche.)

Mr. GLENSOR.—The question is objectionable. I do not see its purpose.

Mr. FORD.—Here is the reason. In reply to this letter, the Baldwin Shipping Company stated that the Southern Pacific Company had guaranteed this shipment. Now, you will notice there is quite an inconsistency between the letter which was written by Mr. L. F. Boyson, advising the Baldwin Shipping Company of what the Southern Pacific Company had done, and the Baldwin Shipping Company's reply.

The COURT.—That is merely their construction of it.

Mr. FORD.—That is all.

### **Testimony of R. Roche, for Defendant.**

R. ROCHE, called for defendant, sworn.

Mr. FORD.—Q. Mr. Roche, you were, during the period we have been discussing here, in the employ of the Southern Pacific Company? A. I was.

Q. You were there at the time of Mr. Brown's employment? A. Yes.

Q. Did you have anything to do with booking any of this space for the Baldwin Shipping Company?

A. I made a firm booking with C. R. Haley & Co.

Q. On how many of these?

A. I think it was contract 613, to which it referred.

Q. It was one of these contracts that you did the booking on? A. Yes.

Q. Anyway, one of the bookings you made?

(Testimony of R. Roche.)

A. Yes.

Q. Did you go personally, or use the telephone?

A. No, I called up Mr. Haley on the telephone and asked him if he would book this [91] freight for me, and he called up later in the day and said he would take the freight at \$15, and I told him it was O. K., we would take it, and I put an O. K. on the slip of paper and passed it to the head of the department, and I think it was confirmed to the Baldwin Shipping Company, and also confirmed to C. R. Haley & Co., and they acknowledged the booking.

Q. Was Mr. Boyson in the office also at the time you have been referring to?

A. I think he was there at that particular time.

Q. There were different ones of you who handled the matter?

A. Yes, there were several men on the import and export department.

Q. Who was your immediate superior?

A. Mr. Brown.

Q. This Mr. Brown who is here? A. Yes.

Q. But were these simple routine matters, that you would get the request and call up and get the rates? A. Yes.

Q. And advise the parties? A. Yes.

Q. How did it happen that this particular shipment you say you booked was booked with C. R. Haley & Co., rather than one of the steamship companies direct?

A. Well, we could not book with any steamship

(Testimony of R. Roche.)

company; the steamship companies were asking \$20 a ton; we were trying to get the lowest rate possible for the clients, and the correspondence shows we went afterwards to the Robert Dollar Company and several other companies that wanted \$20 a ton, and Haley finally agreed to accept it at \$15 a ton and we naturally accepted it under the contract.

Q. Did you know Mr. Simmons, the manager of the Baldwin Shipping Company?

A. No, I was not acquainted with Mr. Simmons; I don't recall being acquainted with him, rather.

Q. You don't recall who it was that requested you to make this booking of the Baldwin Shipping Company? A. No. [92]

Cross-examination.

Mr. GLENSOR.—Q. You say you made this booking with C. R. Haley, one of them?

A. Yes, I made the booking.

Q. What is that contract, 613?

A. I think that is the contract.

Q. What did you know about Haley at that time? Did you know whether he had any steamers, or had any space?

A. We had had previous dealings with Mr. Haley, and we were able to book shipments with him.

Q. Did you clear any one of the bookings that you had made with him?

A. Yes, we made several.

Mr. FORD.—That is our case.

(Testimony of F. E. Ragland.)

Mr. GLENSOR.—I have three letters I wish to put in evidence.

Mr. FORD.—No doubt, I have the originals, so I won't object to them.

Mr. GLENSOR.—I will offer these letters in evidence; they were written in December, two of them undated, and one dated December 27, 1917, and they are demands for performance, clearance, and they request a reply, and no reply has ever been received, and I presume you want me to prove that fact.

The COURT.—They were written to the Southern Pacific Company?

Mr. GLENSOR.—Yes.

Mr. FORD.—You need not prove it at the present time; I would not question it now. If it comes to a question of damages, all the questions of whether the freight was presented for shipment, and why it was not presented, would be brought in.

Mr. GLENSOR.—Yes, I concede that, but if the Court holds the Southern Pacific Company liable, it is going to be quite a burden to get the records of all these cars, and clearances, and so on. The letters are marked "Libelant's Exhibit 2." [93]

**Testimony of F. E. Ragland, for Libelant.  
(In Rebuttal).**

F. E. RAGLAND, called for the libelant in rebuttal.

Mr. GLENSOR.—Q. What is your business, Mr. Ragland?

(Testimony of F. E. Ragland.)

A. Pacific Coast Manager for the Baldwin Shipping Company.

Q. How long have you been employed by the Baldwin Shipping Company?

A. Something over three years.

Q. What was your business before that?

A. I was working for the Western Pacific Railroad Company.

Q. About how long? A. Three or four years.

Q. In other words, you have been in the transportation business for the last seven or eight years; is that correct? A. Yes.

Q. You have been in it continuously during that time? A. Yes.

Q. You know the customs which appertain?

A. Yes.

Q. Will you state in general the manner in which bookings such as these here in question are made; that is to say, in what manner is a booking of this nature brought about? The railroads were soliciting freight, were they not, from the Baldwin Shipping Company, and from other forwarders about that time, were they not? A. Yes.

Q. What was the relation of the soliciting and the making of these bookings?

A. We would get an inquiry, of course, from our New York office, asking us to book certain freight, and as has already been stated, the space situation was very tight at that time, so we would go to all the steamship lines and railroads,—it was customary for the railroads to book space for every



(Testimony of F. E. Ragland.)

one or anyone for the privilege of hauling the freight, getting what they called line haul.

Q. That is to say, the railroads would come to you and solicit freight and as a part of the inducement for shipping over their line would tell you that they would get you ocean space and transportation; is that correct? A. Yes. [94]

Q. That was the universal custom?

A. That was the universal custom.

Q. Did you know at that time whether the railroads made any profit out of the ocean transportation of that freight? A. I did not.

Q. You did not know then? A. No.

Q. You don't know now? A. No.

Mr. FORD.—Mr. Glensor, if there is any contention that the Southern Pacific was making a profit, I would be glad to submit the whole file to you.

Mr. GLENSOR.—No, it is not. I wanted to prove this fact, that the Baldwin Shipping Company did not know anything about it one way or the other. That is not the point of my inquiry.

Mr. FORD.—If it comes to that, we will show without any question that Mr. Simmons could not get the space, and for that reason he was requesting the railroad to get it for him. Miss Green's deposition shows that.

Mr. GLENSOR.—It is a question of the construction of the contract.

The COURT.—Proceed with the examination of the witness.

Mr. GLENSOR.—Q. Mr. Ragland, is it not a fact that some of the other railroad carriers chartered ships to clear commodities that were brought in here by rail?

Mr. FORD.—That is objected to as immaterial, irrelevant and incompetent.

The COURT.—I do not see how it becomes material, but he may answer.

A. Yes, it is a fact that the Western Pacific Company chartered a steamer to protect their contracts.

Mr. GLENSOR.—That is all.

Mr. FORD.—That is all. [95]

[Endorsed]: Filed Feb. 23, 1921. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [96]

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At a stated term of the District Court of the United States, for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, State of California, on Monday, the eighth day of November, in the year of our Lord one thousand nine hundred and twenty. Present: The Honorable MAURICE T. DOOLING, District Judge.

No. 16,755.

BALDWIN SHIPPING COMPANY, etc.,

vs.

SOUTHERN PACIFIC COMPANY, etc.

**Minutes of Court—November 8, 1920—Order  
Dismissing Libel.**

Pursuant to opinion this day received from the Honorable Frank H. Rudkin, Judge, before whom this matter was submitted, the Court ordered that said opinion be filed and made a record herein and pursuant thereto, that the libel filed herein be and the same is hereby dismissed. [97]

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In the District Court of the United States for the Northern District of California, Southern Division, First Division.

IN ADMIRALTY—No. 16,755.

BALDWIN SHIPPING COMPANY, INC., a Corporation,

Libelant,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,

Libelee.

**Memorandum and Order Dismissing Libel.**

AITKEN, GLENSOR, CLEWE & VAN DINE,  
Proctors for Libelant.

FORD & JOHNSON, Proctors for Libelee.

RUDKIN, District Judge.—There is little controversy over the facts in this case. The libelant is a corporation organized and existing under the laws of the State of Illinois, and is engaged in the

business of freight forwarding agent, with an agency at San Francisco, California. The libelee is a railway corporation organized and existing under the laws of the State of Kentucky, and as such is a common carrier engaged in interstate commerce between the States. The railway corporation does not own, control, or operate any steamship or steamship lines between Pacific Coast ports of China or Japan, and has never published or filed with the Interstate Commerce Commission any through or other rates from the port of San Francisco to any port or ports in China or Japan, but in the course of its business, as a matter of accommodation, and to induce shippers to transport their freight and merchandise over the Southern Pacific lines, the company has reserved space on steamers destined for foreign ports for freight and merchandise carried over its lines to San Francisco for foreign shipment. [98]

The libel contains three causes of action. The first charges, in substance, that on the 22d day of June, 1919, the libelee agreed with the libelant to reserve steamer space for the transportation, and to transport or cause to be transported, from San Francisco, California, to Japan, 2,000 tons of pig iron and steel products for late July, August and September clearance, at the rate of \$15.00 per ton; that the libelee did not reserve steamer space for such shipment or any part thereof; that the libelant tendered the freight and demanded steamer space for its transportation from the port of San Francisco to Japan; that the libelee failed, neglected and

refused to accept the freight for transportation, or to transport the same, and that by reason thereof the libelant was compelled to procure other space and transport the freight at a cost of \$10,000.00 in excess of the \$15.00 per ton agreed upon. The remaining two causes of action are the same, but relate to different freight and different shipments.

Under the facts as disclosed by the testimony the libelant contends that the obligation on the part of the libelee to reserve and secure space and transport the freight to the designated port of China or Japan was absolute and unconditional. The libelee, on the other hand, contends that it was a mere agent at best, and having discharged its full duty in that regard, no liability rests upon it; and further, that if its undertaking or agreement be so construed as to impose a further or greater liability, the contract is repugnant to the laws of the United States, against public policy, and void.

In my opinion there can be no recovery in any aspect of the case. If the libelee was a mere agent to reserve steamer space, there is no claim of a failure or breach of duty in that regard, and if the undertaking was an absolute and unconditional one the contract was manifestly against public policy, and void. For example, [99] \$10,000.00 damages is claimed for failure to reserve the space or transport the freight described in the first cause of action, and if this liability is enforced, the obvious result will be that the libelee has transported freight over its own lines in the United States for \$10,000.00 less than the lawful rate from which it may not de-

part. The same is equally true of the other shipments. As said by the Court in *J. H. Hamlen & Sons Co. v. Illinois Cent. R. Co.*, 212 Fed. 324:

“If such contracts were permitted, their effect would be to nullify the provisions of the Interstate Commerce Act prohibiting discrimination, for by guaranteeing a lower rate on the foreign line, the difference, if any, would have to be paid out of the earnings of its own line, resulting in a lower rate than that published and charged to other shippers for the carriage of freight over the lines of the railroads, and a lower rate than that specified in its schedules filed with the commission.”

The contention that a court of admiralty will and must enforce a contract prohibited by plain provisions of an Act of Congress calls for no comment.

The libel must be dismissed, and it is so ordered.

[Endorsed]: Filed Nov. 8, 1920. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [100]

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In the District Court of the United States for the Northern District of California, Southern Division, First Division.

IN ADMIRALTY—No. 16,755.

BALDWIN SHIPPING COMPANY, INC., a Corporation,

Libelant,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,

Libelee.

**Final Decree.**

This cause came on regularly to be heard on the 19th day of August, 1920, Messrs. Aitken, Glensor, Clewe & Van Dine, appeared for libelant, and Messrs. Ford and Johnson, appeared for libelee. And evidence having been adduced by the respective parties and the matter having been argued and submitted to the Court for decision, and the Court having fully considered the matter, and having filed its opinion in writing herein, and the Court having ordered that said libel be dismissed,—

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED, that the amended libel herein be and the same is hereby dismissed and that libelee recover its costs of suit taxed at the sum of \$——.

Dated: November 30, 1920.

FRANK H. RUDKIN,

Judge of the United States District Court.

Foregoing decree approved in form. Lodgment waived.

AITKEN, GLENSOR, CLEWE & VAN  
DINE,

Proctors for Libelant. [101]

[Endorsed]: Filed Dec. 8, 1920. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

Entered in Vol. 10, Judg. and Decrees, at page 217. [102]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

IN ADMIRALTY—No. 16,755.

BALDWIN SHIPPING COMPANY, INC., a Corporation,

Libelant,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,

Libelee.

**Notice of Appeal.**

To Libelee Above Named and to Messrs. Ford and Johnson, Its Proctors:

You will please take notice that Baldwin Shipping Company, Inc., a corporation, libelant above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the Decree in the above-entitled suit entered therein on the 30th day of November, 1920, wherein and whereby it is

ORDERED, ADJUDGED AND DECREED that the amended libel herein be dismissed and that libelee recover its costs of suit.

Dated, Feb. 21, 1921.

GLENSOR, CLEWE & VAN DINE,

Proctors for Libelant.

Due service and receipt of a copy of the within



notice of appeal is hereby admitted this — day of February, 1921.

FORD & JOHNSON,  
Attorney for Libelee.

[Endorsed]: Filed Feb. 23, 1920. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [103]

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In the Southern Division of the United States Dis-  
trict Court for the Northern District of Cali-  
fornia, First Division.

IN ADMIRALTY—No. 16,755.

IN PERSONAM.

BALDWIN SHIPPING COMPANY, INC., a  
Corporation,

Libelant,

vs.

SOUTHERN PACIFIC COMPANY, a Corpora-  
tion,

Libelee.

**Assignment of Errors.**

I.

That the Court erred in holding and deciding that the contracts made between libelant and libelee by which libelee was to reserve space for libelant's freight on steamers sailing from San Francisco were against public policy and void and in not holding that said contracts were valid and enforceable.

## II.

That the Court erred in holding and deciding, in effect, that said contracts were in violation of the Act of Congress known as the Hepburn Act (Act of June 29, 1906), and in not holding that said contracts (being separate and distinct for ocean carriage to foreign countries) were wholly outside said Hepburn Act.

## III.

That the Court erred in sustaining the defense set up in libelee's amendment to its answer to libellant's amended libel and in not holding that said defense was no defense to said amended libel either in law or in fact. [104]

## IV.

That the Court erred in not holding and deciding that libelee was estopped to either allege or prove the matters set up in said amendment to its answer, or to claim that the contracts sued on were either against public policy or void.

## V.

That the Court, in the exercise of its admiralty jurisdiction, erred in holding and deciding, under all the facts in the case, that libelee was not bound by its contracts as set forth in the amended libel and proved at the trial, and in not holding and deciding that libelee was legally bound by its said contracts.

## VI.

That the Court erred in holding and deciding that if the libelee were a mere agent to reserve steamer space, there was no claim of a failure or

breach of duty in that regard, and in not holding that there was a claim of such failure and breach of duty and that such failure and breach of duty was fully proved at the trial.

VII.

That the Court erred in not expressly holding that libelee's undertakings to reserve space for libelant were absolute and unconditional and that it was in no sense a mere agent to reserve such space.

VIII.

That the Court erred in holding and deciding, in effect, that the Hepburn Act above mentioned was applicable in admiralty cases or in admiralty courts in cases involving shipments by water to foreign countries in which no unjust discrimination has been proved.

IX.

That the Court erred in making and entering its final decree [105] dismissing the amended libel with costs and in not making and entering an interlocutory decree in favor of libelant, with interest and costs and referring the case to a Commissioner to ascertain the damages.

Dated, February 21, 1921.

GLENSOR, CLEWE & VAN DINE,

Proctors for Libelant.

Due service and receipt of a copy of the within assignment of error is hereby admitted this 21st day of February, 1921.

FORD & JOHNSON,

Attorneys for Libelee.

[Endorsed]: Filed Feb. 23, 1920. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [106]

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In the Southern Division of the United States Dis-  
trict Court, for the Northern District of Cali-  
fornia, First Division.

IN ADMIRALTY—No. 16,755.

BALDWIN SHIPPING COMPANY, INC., a  
Corporation,

Libelant,

vs.

SOUTHERN PACIFIC COMPANY, a Corpora-  
tion,

Libelee.

**Cost Bond on Appeal.**

KNOW ALL MEN BY THESE PRESENTS:  
That Globe Indemnity Company, a corporation  
organized, existing and doing business under and  
by virtue of the laws of the State of New York and  
having an office and agent of record in the State  
of California, and being duly qualified under the  
laws of the said State of California, to do business  
therein, is held and firmly bound unto Southern  
Pacific Company, a corporation, in the sum of two  
hundred and fifty dollars (\$250.00), to be paid to  
the said Southern Pacific Company, a corporation,  
its successors and assigns, for the payment of  
which well and truly to be made Globe Indemnity  
Company binds itself firmly by these presents.

The condition of this obligation is such, that whereas Baldwin Shipping Company, Inc., a corporation, Appellant, has prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from a decree of the District Court of the United States for the Southern Division of the Northern District of California, bearing date the 30th day of November, 1920, in a [107] suit wherein Baldwin Shipping Company, Inc., a corporation, is libelant, and Southern Pacific Company, a corporation, is libelee.

NOW, THEREFORE, if the above-named appellant, Baldwin Shipping Company, Inc., shall prosecute said appeal with effect and pay all costs which may be awarded against it as such appellant if the appeal is not sustained, then this obligation shall be void, otherwise the same shall be and remain in full force and effect.

Dated, Feb. 21st, 1921.

GLOBE INDEMNITY COMPANY.

[Seal]

By JOHN H. ROBERTSON,  
Its Attorney in Fact.

Approved as to form and sufficiency.

FORD & JOHNSON.

Feb. 21st, 1921.

[Endorsed]: Filed Feb. 23, 1921. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [108]

In the Southern Division of the United States District Court of the Northern District of California, First Division.

IN ADMIRALTY—No. 16,755.

IN PERSONAM.

BALDWIN SHIPPING COMPANY, INC., a Corporation,

Libelant,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,

Libelee.

**Stipulation and Order for Sending up Original Exhibits.**

IT IS HEREBY STIPULATED AND AGREED that all of the original exhibits introduced in evidence in the above cause may be sent up to the United States Circuit Court of Appeals for the Ninth Circuit on the appeal herein as original exhibits and need not be copied.

Dated: Feb. 21, 1921.

GLENSOR, CLEWE & V. D.,  
Proctors for Libelant.

FORD & JOHNSON,  
Proctors for Libelee.

**ORDER.**

Pursuant to the foregoing stipulation it is hereby ordered that the original exhibits introduced in evi-

dence in the above cause may be sent up to the United States Circuit Court of Appeals for the Ninth Circuit on the appeal herein as original exhibits and need not be copied.

Dated: Feb. 23, 1921.

M. T. DOOLING,  
Judge.

[Endorsed]: Filed Feb. 23, 1921. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [109]

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**Certificate of Clerk U. S. District Court to Apostles  
on Appeal.**

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 109 pages, numbered from 1 to 109, inclusive, contain a full, true, and correct transcript of certain records and proceedings, in the cause entitled, Baldwin Shipping Company, Inc., a Corp., Libelant, vs. Southern Pacific Company, a Corporation, Respondent, No. 16,755, as the same now remain on file and of record in this office; said transcript having been prepared in accordance with and pursuant to the praecipe for apostles on appeal (copy of which is embodied in said transcript), and the instructions of the proctors for libelant and appellant herein.

I further certify that the cost of preparing and certifying the foregoing apostles on appeal is the sum of thirty-nine dollars and fifty-five cents (\$39.55), and that the same has been paid to me by the proctors for appellant.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 4th day of March, A. D. 1921.

[Seal]

WALTER B. MALING,  
Clerk.

By C. M. Taylor,  
Deputy Clerk. [110]

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[Endorsed]: No. 3656. United States Circuit Court of Appeals for the Ninth Circuit. Baldwin Shipping Company, Inc., a Corporation, Appellant, vs. Southern Pacific Company, a Corporation, Appellee. Apostles on Appeal. Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, First Division.

Filed March 4, 1921.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.



**Libelant's Exhibit No. 1.**

[Letter-head of Southern Pacific Company.]

In reply please refer to  
No. 1-E-Contract #607.

San Francisco, Cal., June 22, 1917.

Baldwin Shipping Co.,  
433 California St.,  
San Francisco, Cal.

Gentlemen:

Referring to our phone conversation we have booked for your account 750 tons of tin plate a month for September, October, November and December to Shanghai at \$16.00 per ton, weight or measurement, ship's option.

This will be covered by Sou. Pac. Contract #607.

Kindly confirm in writing.

Yours truly,

(Sgd.) J. G. STUBBS,

L. & B.

Libelant's Ex. 1 for Identification.

Libelant's Ex. 1.

[Endorsed]: No. 3656. United States Circuit Court of Appeals for the Ninth Circuit. Filed Mar. 4, 1921. F. D. Monckton, Clerk.

**Libelant's Exhibit No. 2.**

June 26th, 1917.

Tinplate.

SUBJECT—3,000 TONS TINPLATE—SHANGHAI. Sept. to Dec., 1917, Inc.

Mr. J. G. Stubbs, G. F. A.,  
Southern Pacific Co.,  
San Francisco, Calif.

Dear Sir:

This will acknowledge receipt of your letter of June 22nd, File 1-E-Contract #607, booking for the account of the Baldwin Shipping Company 750 tons tinplate per month, September, October, November and December, 1917, at ocean rate of \$16.00 per ton, weight or measurement, ship's option,—destined Shanghai and covered by your Contract No. 607.

You have advised us that at the present time you cannot inform us of the name of line with which you have booked this 3,000 tons of tinplate, but guarantee to clear on first-class steamers carrying lowest rate of insurance, and to protect the above rate,—this is agreeable to us, however, at the earliest possible date let us know with whom you have booked this business so that we can give instructions to our New York office, relative issuance of the bills of lading.

We will keep you advised of the forwarding of

this business from the mills and, if we can assist you in any way, do not fail to let us know.

Yours truly,

BALDWIN SHIPPING COMPANY,

---

Vice-Pres.

D

CC—NY

Chgo

In taking out ladings on this business see that So. Pac. is the Terminal delivery line.

Libelant's Ex. No. 4 for Identification.

Libelant's Ex. 2.

[Endorsed]: No. 3656. United States Circuit Court of Appeals for the Ninth Circuit. Filed Mar. 4, 1921. F. D. Monckton, Clerk.

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**Libelant's Exhibit No. 3.**

[Letter-head of Southern Pacific Company.]

In reply please refer to  
No. 1-E-Contract #608.

San Francisco, Cal., June 22, 1917.

Baldwin Shipping Co.,  
433 California St.,  
San Francisco, Cal.

Gentlemen:

Confirming phone conversation:

We have booked for your account 2000 tons of pig iron and steel articles, in excessive sizes, Japan, late July, August and September, at \$15.00 per ton, weight or measurement, ship's option.

This will be covered by Southern Pacific Contract #608.

Kindly confirm in writing.

Yours truly,

J. G. STUBBS,

L. & B.

Libelant's Ex. 2 for Identification.

Libelant's Ex. 3.

[Endorsed]: No. 3656. United States Circuit Court of Appeals for the Ninth Circuit. Filed Mar. 4, 1921. F. D. Monckton, Clerk.

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**Libelant's Exhibit No. 4.**

June 26th-1917.

S. F. 1112.

SUBJECT—2,000 TONS STEEL ARTICLES—  
JAPAN.

Mr. J. G. Stubbs, G. F. A.,  
Southern Pacific Co.,  
San Francisco, Calif.

Dear Sir:

This will acknowledge receipt of your letter of June 22nd, File 1—E, Contract #608, booking for the account of the Baldwin Shipping Company 2000 tons pig iron and steel articles, in excessive sizes, Japan, late July, August and September clearance at ocean rate of \$15.00 per ton, weight or measurement, ship's option,—covered by your Contract No. 608.

You have advised us that just at the present time you cannot divulge to us name of steamer line with whom you have booked these 2,000 tons steel arti-

cles, but that you guarantee to protect \$15.00 rate, and clear on first-class steamers carrying lowest rate of insurance, however, as soon you are able to advise us with whom you have booked this freight, please to do so in order that we may give instructions to our New York office, relative to the issuance of the bills of lading.

We will keep you advised of the forwarding of this business from the mills, and, if we can be of any further assistance to you, do not fail to let us know.

Yours truly,  
BALDWIN SHIPPING COMPANY,

---

Vice-pres.

D.

CC—NY. Chgo.

In routing this business do not fail to see that the So. Pac. is the terminal delivery line.

Libelant's Ex. 4.

[Endorsed]: No. 3656. United States Circuit Court of Appeals for the Ninth Circuit. Filed Mar. 4, 1921. F. D. Monckton, Clerk.

**Libelant's Exhibit No. 5.**

[Letter-head of Southern Pacific Company.]

In reply please refer to

No. 1-E—Iron & Steel Contract 613.

June 28, 1917.

Messrs. C. R. Haley & Company,

149 California Street,

San Francisco, Calif.

Gentlemen:—

Confirming phone conversation date:

Please book for the Southern Pacific 2500 tons Pig Iron and Steel articles for August and December clearance to Kobe and Yokohama at \$15.00 weight or measurement, ship's option.

This will be covered by Southern Pacific Contract 613.

I am attaching hereto an extra copy of this letter and would thank you to place acknowledgment thereon and return.

Yours truly,

J. G. STUBBS.

JMH.

Enclosures.

CC—Baldwin Shipping Co.,

433 California St., City.

Libelant's Ex. 3 (Identification).

Libelant's Ex. 5.

[In pencil:] Rite N. Y.

[Endorsed]: No. 3656. United States Circuit Court of Appeals for the Ninth Circuit. Filed Mar. 4, 1921. F. D. Monckton, Clerk.

**Libelant's Exhibit No. 6.**

June 28th-1917.

S. F. 1113.

Mr. J. G. Stubbs, G. F. A.,  
Southern Pacific Co.,  
San Francisco, Calif.

Dear Sir:

This will confirm telephone conversation with your Mr. Brown, booking firm for the account of the Baldwin Shipping Company, 2500 tons steel articles, in excessive sizes, destined Kobe-Yokohama, for clearance from San Francisco, August to December, inclusive, 1917, at ocean rate of \$15.00, weight or measurement, ship's option,—covered by your Contract No. 613.

You advise that you guarantee to protect ocean rate of \$15.00 per ton, and to clear on first-class steamers carrying lowest rate of insurance, however, at the earliest possible date would thank you to advise steamer line with which you booked these 2500 tons, so that we can instruct our New York office relative to issuance of bills of lading.

Please acknowledge.

Yours truly,  
**BALDWIN SHIPPING COMPANY,**

\_\_\_\_\_  
Vice-pres.

D.

Rite N. Y.

Libelant's Ex. 6.

[Endorsed]: No. 3656. United States Circuit Court of Appeals for the Ninth Circuit. Filed Mar. 4, 1921. F. D. Monckton, Clerk.

**Libelant's Exhibit No. 1.**

COPY.

July 19th-1917.

SF. 1113.

Subject: "2500 Tons Steel Articles—Japan.

Mr. J. G. Stubbs, G. F. A.,  
Southern Pacific Company,  
San Francisco, Cal.

Dear Sir:

Referring to your letter of June 28th, your file 1-3-Contract 613, covering approximately 2500 tons of pig iron and steel articles which you have booked for August to December clearance, Kobe-Yokohama, at ocean rate of \$15.00.

Kindly let us have the name of the steamship line via which these shipments are booked, so that we can advise the shippers.

Yours truly,  
BALDWIN SHIPPING CO.,

---

Vice-Pres.

S. D.

BALDWIN SHIPPING COMPANY.

COPY.

San Francisco, Sept. 12th-1917.

Tinplate.

Mr. J. G. Stubbs, G. F. A.,  
Southern Pacific Company,  
San Francisco, Cal.

Dear Sir:

Please note that it will be necessary for you to



have Export Licenses on all Shanghai, Java and Japan tinplate before shipments can be cleared.

Kindly refer to your Contract No. 607 booking of tinplate destined Shanghai, China, for the account of the Baldwin Shipping Co.

For your information beg to state that we have just received the following bills of lading to apply on this booking:

SB B/L 1704—Car Pa 56788

“ “ 1705— “ NYP 1912

“ “ 1702— “ “ “

“ “ 1703— “ “ “ , Pa 56788, Pa  
22887, WM 25832

Yours truly,

(Sgd.) BALDWIN SHIPPING CO.,

J. H. SIMMONS, V.-P.

JSW-W.

CC-NY-N. Y. 10173.

BALDWIN SHIPPING COMPANY.

San Francisco, Nov. 2nd-1917.

S. F. 1112.

Mr. J. G. Stubbs, Agent,

Southern Pacific Co.,

San Francisco, Calif.

Dear Sir:

I respectfully refer you to your letter of June 22, your File 1-E, contract 608, in which you state you have booked firm for the account of the Baldwin Shipping Co., 2,000 tons pig iron and steel articles, in excessive sizes, Japan, late July, August and September clearance at an ocean rate of \$15.00 per ton, weight or measurement, ship's option.

I beg to call your attention to the fact that most of this tonnage is on hand San Francisco, in fact has been here for two or three months, and notwithstanding our repeated request on your office, and also Mr. Hardy's office as to prospective clearances, we have received absolutely no information whatever.

Our clients have been pressing us on this business and they inform us that we must give them some definite satisfaction immediately, as they are tired of our repeated promises,—and, at the present time we must insist on the clearance of this business without delay.

Kindly investigate this matter, and advise what reply we shall make to the shippers. In further connection with this booking beg to advise that the balance of the freight covered by this contract is now enroute, and shippers are calling on our New York office for export bills lading, and will thank you to see that the necessary authority is transmitted to your New York office for issuance of these documents.

Yours truly,

(Sgd.) BALDWIN SHIPPING CO.,

J. H. S.

CC-NY.

COPY.

SOUTHERN PACIFIC COMPANY.

I. E. C. R. Haley Cont. 607.

San Francisco, Oct. 23-1917.

Messrs. C. R. Haley & Co.,  
149 California, St.,  
San Francisco, Calif.

Gentlemen:

Under above mentioned contract you booked 760 tons of tinplate per month, September, October, November, and December clearance to Shanghai at ocean rate of \$16.00 per 2,000 lbs.

Wish to advise Union Pacific Export bill of lading 2034 covering approximately 350 tons to apply on this booking, and the Baldwin Shipping Company are holding export license which expires Nov. 22nd. Will you kindly look into this immediately, advising me by return mail on what steamer this tinplate will clear in order that I may arrange to secure the necessary papers for clearance.

Yours truly,

(Sgd.) J. G. STUBBS,

RWD.

CC-Baldwin Shipping Co.

Your letter Oct. 12th, S. F. tinplate.

San Francisco, California, December 27th, 1917.

N. Y. File 9956.

Southern Pacific Co.,  
San Francisco,  
California.

Gentlemen:

Attention—Mr. J. G. Stubbs, G. F. A.

Your file No. 1—E, Contract #607.

We beg to refer you to your letter of June 22nd,

1917, wherein you confirmed your earlier telephonic advice that you had booked for movement to Shanghai 750 tons of tinplate per month for September, October, November and December. This booking was made by you to complete through shipments to be initiated by you on our account of tin plate from eastern points of origin to Shanghai.

Your files will disclose that numerous shipments originating at eastern points have been undertaken by you and that we have from time to time advised you thereof. We have not yet been advised by you that any of this tin plate has been cleared from this coast and desire to have you hear us fully on the subject by return mail.

We shall be very glad to do everything in our power to aid you in moving this freight. Please give the matter your immediate attention and let us have your acknowledgment of the receipt of this communication.

Yours very truly,  
BALDWIN SHIPPING COMPANY,  
By J. H. SIMMONS,  
Vice-President.

San Francisco, Calif., December, 1917.  
S. F. 1113.

Southern Pacific Company,  
San Francisco,  
California.

Gentlemen:

Attention—Mr. J. G. Stubbs, G. F. A.

Your file No. 1—E, Iron and Steel Contract, #613.

We beg to refer you to your letter of June 28th,

1917, addressed to Messrs. G. R. Haley & Co., a copy of which you forwarded to us, wherein you confirmed your earlier telephonic advice to Haley & Co. that you had booked for movement to Kobe and Yokahama 2500 tons pig iron and steel articles for August and December clearance. This booking was made by you to complete through shipments to be initiated by you on our account of pig iron and steel articles from eastern points of origin to Kobe and Yokahama.

Your files will disclose that numerous shipments originating at eastern points have been undertaken by you and that we have from time to time advised you thereof. We have not yet been advised by you that any of this pig iron and steel has been cleared from this coast, and desire to hear from you fully on the subject by return mail.

We shall be very glad to do everything in our power to aid you in moving this freight. Please give the matter your immediate attention and let us have your acknowledgment of the receipt of this communication.

Yours very truly,

BALDWIN SHIPPING COMPANY.

By \_\_\_\_\_,

Vice-President.

[Endorsed]: United States District Court. No. 16,799. Baldwin S. Co. vs. S. P. Co. Lib. Exhibit No. 1. Filed Aug. 19, 1920. Walter B. Maling, Clerk. By Lyle P. Morris, Deputy Clerk.

No. 3656. United States Circuit Court of Ap-

peals for the Ninth Circuit. Filed Mar. 4, 1921.  
F. D. Monckton, Clerk.

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**Libelant's Exhibit No. 2.**

[Letter-head of Baldwin Shipping Company.]

San Francisco, Cal., December 27—1917.

Please Refer to File NY file 9956.

Southern Pacific Co.,  
San Francisco,  
California.

Gentlemen:

Attention—Mr. J. G. Stubbs, G. F. A.

Your file No. 1—E, Contract #607.

We beg to refer you to your letter of June 22nd, 1917, wherein you confirmed your earlier telephonic advice that you had booked for movement to Shanghai 750 tons of tin plates per month for September, October, November and December. This booking was made by you to complete through shipments to be initiated by you on our account of tinplate from eastern points of origin to Shanghai.

Your files will disclose that numerous shipments originating at eastern points have been undertaken by you and that we have from time to time advised you thereof. We have not yet been advised by you that any of these tin plates have been cleared from this coast and we desire to hear from you fully on this subject by return mail.

We shall be very glad to do everything in our power to aid you in moving this freight. Please give this matter your immediate attention and let

us have your acknowledgment of the receipt of this communication.

Yours very truly,  
BALDWIN SHIPPING COMPANY.  
By J. H. SIMMONS,  
Vice-Pres.

Received Dec. 28, 1917.

[Letter-head of Baldwin Shipping Company.]

San Francisco, Cal., December, 1917.

Please refer to file SF 1113.

Southern Pacific Company,  
San Francisco, Cal.

Gentlemen:

Attention—Mr. J. G. Stubbs, G. F. A.

Your file No. 1—E, Iron and Steel Contract 613.

We beg to refer you to your letter of June 28th, 1917, addressed to Messrs. C. R. Haley & Co., a copy of which you forwarded to us, wherein you confirmed your earlier telephonic advices to Haley & Co., that you had booked for movement to Kobe and Yokohama 2500 tons pig iron and steel articles for August and December clearance. This booking was made by you to complete through shipments to be initiated by you on our account of pig iron and steel articles from eastern points of origin to Kobe and Yokohama.

Your files will disclose that numerous shipments originating at eastern points have been undertaken by you and that we have from time to time advised you thereof. We have not yet been advised by you that any of this pig iron and steel has been cleared

from this coast, and desire to hear from you fully on the subject by return mail.

We shall be very glad to do everything in our power to aid you in moving this freight. Please give the matter your immediate attention and let us have your acknowledgment of the receipt of this communication.

Yours very truly,  
BALDWIN SHIPPING COMPANY.  
By J. H. SIMMONS,  
Vice-President.

Received Dec. 28, 1917.

[Letter-head of Baldwin Shipping Company.]

Received Dec. 28, 1917.

San Francisco, Cal., December, 1917.

Please refer to file SF 1112.

Southern Pacific Co.,  
San Francisco, Cal.

Gentlemen:

Attention—Mr. J. G. Stubbs, G. F. A.

Your file No. 1—E, Contract 608.

We beg to refer you to your letter of June 22nd, 1917, in which you confirmed your earlier telephonic advice to the effect that you had booked for movement to Japan 2000 tons of pig iron and steel articles, in excessive sizes during late July and the months of August and September of this year. This booking was made by you to complete through shipments of iron and steel which were initiated by you on our account from eastern points of origin to points of destination in Japan.

Your files will disclose the fact that such ship-



ments were undertaken by you at eastern points of origin and that we have frequently called upon you to complete the movement thereof to Japan. This you have failed to do and iron and steel which under your agreement with us should have been cleared from this coast on or prior to the end of September of this year, is still in this port.

Subsequently to the 30th day of September, 1917, we made further demand upon you for the completion of the shipments, but without avail.

We must and we do hold you responsible for and look to you for the completion of your contract. In view, however, of the previous course of events and the present situation, we find ourselves under the necessity of securing the movement of the tonnage to Japan the shipment of which you have undertaken, but which up to this time has proceeded no further than to this port, as best we may.

You are advised therefore that we shall endeavor to secure the necessary cargo space for this purpose in the open market upon the best terms available. We shall wish to minimize damages maybe and to that end will whenever we can conveniently do so, inform you of contemplated bookings so as to give you an opportunity to obtain better terms if you desire to do so.

You are further advised that we shall hold you responsible for damage which we have already suffered or which we may hereafter suffer by reason

of your nonperformance of your contract.

Yours very truly,

BALDWIN SHIPPING COMPANY.

By J. H. SIMMONS,

Vice-President.

[Endorsed]: United States District Court. No. 16,799. Baldwin S. Co. vs. S. P. Co. Lib. Exhibit No. 2. Filed Aug. 19, 1920. Walter B. Maling, Clerk. By Lyle P. Morris, Deputy Clerk.

No. 3656. United States Circuit Court of Appeals for the Ninth Circuit. Filed Mar. 4, 1921. F. D. Monckton, Clerk.

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**Certificate of Clerk U. S. District Court as to  
Original Exhibits.**

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the attached exhibits (eight in number), marked:

(EXHIBITS ATTACHED TO DEPOSITION  
OF GLENNA DE WITT GREEN):

Libelant's Exhibit 1 (letter).

Libelant's Exhibit 2 (letter).

Libelant's Exhibit 3 (letter).

Libelant's Exhibit 4 (letter).

Libelant's Exhibit 5 (letter).

Libelant's Exhibit 6 (letter).

(EXHIBITS FILED IN OPEN COURT):

Libelant's Exhibit 1 (letters—6).

Libelant's Exhibit 2 (letters—4).

are original exhibits introduced and filed in the cause entitled: Baldwin Shipping Company, Inc., a Corp., Libelant, vs. Southern Pacific Company, a Corp., Respondent, No. 16,755, and are transmitted herewith in their original form in accordance with an order of this Court.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 4th day of March, A. D. 1921.

[Seal]

WALTER B. MALING,

Clerk.

By C. M. Taylor,

Deputy Clerk.

